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CLERK OF COURT

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 450

**ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALKBRENNER, ET AL., PETITIONERS,**

vs.

**CITY OF JEANNETTE (PENNSYLVANIA),
A MUNICIPAL CORPORATION, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT**

PETITION FOR CERTIORARI FILED OCTOBER 8, 1942.

CERTIORARI GRANTED FEBRUARY 15, 1943.

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Docket Entries

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdoch, Jr.,**

v. ²

**City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania)**

**No. 1206
Civil Action**

**Basis of Action: Complaint for interlocutory or preliminary
injunction**

For Plaintiff:

**Hayden C. Covington, 117 Adams St., Brooklyn, N. Y.
Theodore Epstein, Grant Bldg., Pittsburgh, Pa.**

For Defendant:

**Fred B. Trescher, for City of Jeannette,
Kunkle, Walthour & Trescher, Esqs., for John M. O'Con-
nell**

1941

Jan. 11 Complaint filed.

Jan. 11 Summons issued.

**Jan. 11 Notice of filing suit, date for hearing fixed for
January 27, 1941, at 10 o'clock. Motion for Inter-
locutory Injunction filed.**

- Jan. 20 Summons returned served on John M. O'Connell individually and as Mayor of City of Jeannette at Jeannette on Jan. 15, 1941.
- Jan. 20 Injunction returned served on J. O'Connell for City of Jeannette at Jeannette on 1-15-41.
- Jan. 21 Praecipe for appearance of Kunkle, Walthour & Trescher, Esqs. for defendants; filed.
- Jan. 21 Answer of defendants to complaint, filed.
- Jan. 22 Acceptance of service of answer to complaint filed by attorney for plaintiffs.
- Jan. 27 Hearing on Dismissal and Injunction before Gibson, J., C. A. V.
- Jan. 27 Trial Memo. filed: (Filed in 1183 Civil Action.)
- Feb. 21 Hearing on complaint and answer before Gibson, J. Adjourned to Feb. 24, 1941, at 1:30 P.M.
- Feb. 24 Hearing concluded C.A.V.
- Feb. 24 Trial memo filed.
- May 2 Opinion, Findings of Fact, Conclusions of Law and Discussion filed stating that plaintiffs are entitled to a decree.
- May 13 Decree filed and entered permanently enjoining defendants from interfering with plaintiffs and directing defendants to pay all costs.
- July 30 Notice of appeal filed by defendant.
- July 30 Appeal bond filed.
- July 30 Designation of portions of record, proceedings and evidence to be contained in record of appeal filed.
- Aug. 18 Transcript of testimony filed, with order of Court thereon directing that same be filed.

Received and Filed Sep. 11, 1941
 WILLIAM P. ROWLAND, Clerk

Complaint

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF PENNSYLVANIA

Pittsburgh Division

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Plaintiffs,*

v.

No. 1206
Civil Action

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania),
Defendants.

TO SAID COURT:

Now come the above named plaintiffs and complain of the above named defendants and for a cause of action would show:

1: Jurisdiction of this suit is based upon existence of a "federal question" irrespective of the amount of money involved, in that this action arises under the Constitution and laws of the United States and involves purely and solely "civil rights" under and by virtue of the Civil Rights Act of 1871 and Section 24 (14) of the Judicial Code otherwise known as 28 U. S. C. A. 41 (14), which confers jurisdiction upon United States District Courts to entertain suits for injunction to redress the deprivation of "civil rights" by persons acting under color of ordinance, law or statute of a state.

2. All the plaintiffs are resident citizens of the Commonwealth of Pennsylvania and of the Federal Western District of Pennsylvania, except the plaintiff LAMBORN, a

resident citizen of the State of Ohio, and plaintiff SEDERS, a resident citizen of the State of West Virginia.

3. Defendant CITY OF JEANNETTE (Pennsylvania) is a municipal corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania.

4. Defendant JOHN M. O'CONNELL is the duly qualified and acting Mayor of said City of Jeannette and is a resident citizen of the Commonwealth of Pennsylvania, and is sued herein individually and as mayor aforesaid.

5. Plaintiffs are Jehovah's witnesses and bring this suit for themselves individually and as a class action for the use and benefit of all Jehovah's witnesses situated in the counties of Westmoreland and Allegheny of the Commonwealth of Pennsylvania, and for all Jehovah's witnesses throughout the entire Commonwealth of Pennsylvania and adjoining states.

6. That Jehovah's witnesses are an unincorporated body of followers of Jesus Christ who are entirely devoted to Him and to His Father, ALMIGHTY GOD, "whose name alone is JEHOVAH," and who are diligent and faithful in carrying out the commands of the Most High God recorded in The Bible, and are not a sect, cult or religion. Each of them is in a covenant with Almighty God to obey His will and by the terms of said covenant they are required to give witness to the name, honor and majesty of ALMIGHTY GOD and His Theocratic Government. Jehovah's witnesses are not a recently organized group but members of that group have been active on earth at all times during more than six thousand years last past.

7. That each of the plaintiffs and all of Jehovah's witnesses are ordained ministers of Jehovah God, and as such they engage in preaching the gospel of God's Kingdom from house to house and publicly upon the streets in every community and district of the State of Pennsylvania and elsewhere, as did Jesus Christ and His apostles in times of old. This work plaintiffs do by means of distributing literature

printed by the Watchtower Bible and Tract Society, Inc., a New York corporation, and the Watch Tower Bible & Tract Society, a Pennsylvania corporation, in the form of books, booklets and periodicals of various titles and issues. These publications are delivered to people at their homes and upon the streets, often as outright gifts and at other times recipients of the publications give small contributions to aid in producing and distributing more like literature, all of which is dispensed for the purpose of enabling the people to conduct private Bible study in their homes, either alone or with friends. The Watchtower Bible and Tract Society, Inc., is a membership corporation of the State of New York, and the Watch Tower Bible & Tract Society is a corporation created, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania. Both of said corporations are charged by law to print, publish and disseminate Bible truths in various languages by means of tracts, pamphlets, books, booklets, periodicals and otherwise recorded messages; one of such periodicals being the semimonthly magazine called "The Watchtower", and another the bi-weekly journal called "Consolation". The purpose of said "Watchtower" magazine is to enable the people to know JEHOVAH GOD and His purposes expressed in The Bible, and the magazine contains Bible instruction specifically designed to aid Jehovah's witnesses and all persons of goodwill toward Almighty God; it adheres strictly to the Bible as authority for its utterances and is entirely free and separate from all religions, parties, sects and other worldly organizations. It is wholly and without reservation for the Kingdom of Jehovah God under His Son Christ Jesus. The "Watchtower" magazine is not dogmatic, but invites careful and critical examination of its contents in the light of the Scriptures. The magazine "Consolation" is a journal of fact, hope and courage, and its columns contain truthful information on current world affairs, showing the relationship between such current happenings and the fulfillment of Jehovah's prophecies recorded centuries ago in the Bible. Very

much of such informative and helpful literature is being constantly produced and distributed by Jehovah's witnesses under direction of aforesaid corporate societies. During the past two decades alone more than three hundred million volumes in almost a hundred different languages have been delivered into the hands of millions of people by Jehovah's witnesses. The wholesome and hopeful message contained in all such literature is based entirely upon the teachings of ALMIGHTY GOD set forth in The Bible. It is a literature unique in this day and age and is not replaced or duplicated by any other literature now being published. This literature is of utmost necessity and usefulness to all thinking persons who desire the way to life, and definitely aids everyone studying it to obtain accurate knowledge of the Creator and understanding of His will expressed in The Bible.

8. That the literature thus distributed by plaintiffs and all others of Jehovah's witnesses relates exclusively to Biblical matters, explaining God-given prophecies recorded centuries ago in Holy Writ and which are now being fulfilled, and showing how, according to The Bible, the time is near at hand when JEHOVAH, the Almighty God, will completely destroy His chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon (Revelation 16: 13-16); which destructive act of Almighty God shall be immediately followed by continuing growth and irresistible expansion of God's Government in all the earth, to bring peace, joy, prosperity, happiness and everlasting life to all survivors of that most terrible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of Almighty God be raised from the dead to live upon earth. Contents of said "Watchtower" magazine and kindred publications are, in part, admittedly, a vigorous attack upon ALL RELIGION as practiced today and at all times since man has been upon earth, but ALSO such contents of said publications clearly set forth the true distinc-

tion between *all religion*, on the one hand, and, on the other hand, the true worship or service of Almighty God, thereby exposing religion as a snare and a racket of the very worst kind and proving beyond question that *no religion* is in any way related to or a necessary part of the true worship of Almighty God. That no part of the contents of such literature advocates overthrow of government by force or violence or by unlawful means, and does not in any way interfere with the governments of various nations of earth, in regard to every one of which governments Jehovah's witnesses are strictly neutral.

9. That Jehovah's witnesses have for many years prior to the institution of this suit engaged in distribution of aforesaid literature to residents of aforesaid Allegheny and Westmoreland Counties, including said City of Jeannette, by going from house to house and to pedestrians upon the streets.

10. That on or about the third day of April, 1939, the defendants, acting individually and by and through their agents, servants and employees, for the sole purpose of suppressing the lawful and benevolent activities of plaintiffs and many other of Jehovah's witnesses for whom this suit is brought and to deprive them of liberty to exercise their rights of freedom to worship Almighty God, freedom of speech, press and assembly, did unlawfully cause the arrest of plaintiffs and other persons known as Jehovah's witnesses and thereafter maliciously prosecuted plaintiffs and others for an alleged violation of a municipal ordinance hereinafter described. That on other occasions since April 3, 1939, the defendants have caused the arrest of some of plaintiffs and others of Jehovah's witnesses and threaten to continue to enforce said ordinance in like manner as to plaintiffs and all others of Jehovah's witnesses, and threaten to continue to arrest, maliciously prosecute, vex and harass plaintiffs and others of Jehovah's witnesses and through such enforcement of said ordinance to deprive them of their civil rights and will do so unless stopped by this court.

11. That the ordinance under which plaintiffs and others of Jehovah's witnesses have been arrested and prosecuted for exercising the right of free press, free speech, and freedom to worship Almighty God, is known as Ordinance No. 60 of the City of Jeannette, and which ordinance reads as follows:

"That all persons canvassing for or soliciting within said Borough (now City of Jeannette), orders for goods, paintings, pictures, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

"For one day \$1.50, for 1 week, seven \$7.00 Dollars, for two weeks twelve \$12.00 Dollars, for three weeks twenty \$20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

"That all persons huckstering, peddling or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the sum of ten (\$10.00) Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding

five (5) days or to the County Jail for a period not exceeding thirty (30) days."

12. That said arrests of Jehovah's witnesses have continued since April 1939 to this date and at present there are pending many cases against the plaintiffs under said ordinance on account of their aforesaid benevolent and lawful activities. That plaintiffs and others of Jehovah's witnesses, although not guilty of any crime or wrong, have been compelled to remain in jail for long periods of time while waiting for bond and perfecting appeal from said wrongful convictions, under filthy, unhealthy and unsanitary conditions. That after being falsely arrested they have been compelled to undergo a mock trial where they were denied their rights of freedom of speech, of press and of worship by said defendant O'CONNELL in the wrongful application to them of said ordinance above described, all contrary to the Federal Constitution, Fourteenth Amendment. Plaintiffs allege that all of said above described prosecutions under said ordinance are a part of a conspiracy between said defendant O'CONNELL and other persons to deprive plaintiffs and others of Jehovah's witnesses of their civil rights secured by the Federal Constitution. In this defendants and their employees act under color of the above described ordinance. That after such convictions by defendant O'CONNELL in his Mayor's Court of the City of Jeannette the plaintiffs have to undergo great burden of expense to appeal from their aforesaid wrongful convictions to higher courts. That they are now unable to continue to appeal and provide counsel for future cases threatened by defendants to be brought against plaintiffs when exercising their constitutional rights in the manner hereinbefore described. That such expense is an unnecessary and unlawful burden cast upon plaintiffs.

13. That the sole facts made the basis of said false arrests and wrongful convictions are that plaintiffs and others of Jehovah's witnesses go from door to door as did the Lord Jesus Christ and His Apostles preaching the gospel of God's Kingdom, The Theocratic Government, by distributing liter-

ature explaining the purposes of Almighty God set forth in The Bible and also distributing such literature upon the streets; publicly, to pedestrians. That plaintiffs and others of Jehovah's witnesses so acting are not peddlers and hawkers but are engaged in the exercise of constitutional rights in a lawful manner. That because of such above facts and because it would be an insult to Almighty God to apply for a permit and because said ordinance does not apply and is unconstitutional and contrary to the Federal Constitution's Fourteenth Amendment when applied to plaintiff's above described activity, plaintiffs and all others of Jehovah's witnesses refuse to apply for a permit to preach the gospel of God's Kingdom as above described and to exercise their constitutional right to engage freely in "press activity".

14. That the above described conduct and threatened conduct of defendants against plaintiffs and others of Jehovah's witnesses constitute violation of plaintiffs' civil rights contrary to Federal statutes, 18 U.S.C.A., sections 51 and 52, and also violation of the "Civil Rights Act of 1871" in that the defendants concerned act under color of law and in a conspiracy to deprive Jehovah's witnesses of their constitutional rights of freedom of speech, of press, of assembly, and freedom to worship ALMIGHTY GOD, by unlawfully arresting and falsely charging and wrongfully threatening to arrest and charge the said Jehovah's witnesses with a violation of the said above described ordinance of aforesaid Pennsylvania municipality.

15. That it is the desire of all of said plaintiffs and all others of Jehovah's witnesses to be free, without molestation from defendants, to worship and serve ALMIGHTY GOD according to dictates of their consciences. That as such ordained ministers of Jehovah God plaintiffs and all others of Jehovah's witnesses cannot cease preaching the gospel, being firmly bound under terms of their covenant with Almighty God to preach thus until 'the cities are desolate' and for failure to do so they shall suffer everlasting destruction at the hand of Almighty God, according to His sure Word

written at Acts 3:22,23; Ezekiel 33:8,9; Isaiah 6:9,11. That Almighty God in His written Word has specifically commanded such preaching to be done by plaintiffs and others of Jehovah's witnesses among the people of every place in this land, including all the aforesaid communities of Westmoreland and Allegheny Counties and other counties and communities thereof in the entire Commonwealth of Pennsylvania, during the lifetime of said Jehovah's witnesses. That plaintiffs have from time to time organized groups of Jehovah's witnesses to visit communities like the aforesaid municipality of Jeannette and to call upon all residents at their homes and distribute aforesaid literature from door to door and also to pedestrians on the public streets. That such groups are composed of Jehovah's witnesses from many parts of the State of Pennsylvania and adjoining states.

16. That plaintiffs are entitled under the laws and Constitution of the United States to thus distribute literature from door to door and on the streets in aforesaid municipality, according to opinions delivered by the Supreme Court of the United States in three separate cases brought against Jehovah's witnesses in the States of Georgia, New Jersey, and Connecticut, respectively. That plaintiffs apprehend that defendants will perform their threats and will continue to arrest and prosecute Jehovah's witnesses and otherwise induce and permit continuation of false arrests, malicious prosecution and similar deprivation of civil rights of plaintiffs under the aforesaid ordinance. That performance of such threats will greatly damage and injure Jehovah's witnesses as is hereinafter shown.

17. That the above described ordinance of said City of Jeannette is unconstitutional and void as construed and applied by defendants against plaintiffs because as so construed and applied each of the provisions of said ordinance has been used and will be used unlawfully to deny and deprive plaintiffs and others of Jehovah's witnesses of their "civil rights" of freedom of speech, of press and of assembly,

and freedom to worship Almighty God according to dictates of their consciences, all contrary to the Federal Constitution, Fourteenth Amendment, Section 1.

18. That by reason of aforesaid conduct on the part of defendants the plaintiffs and others of Jehovah's witnesses have been interfered with and frustrated in the exercise and enjoyment of their constitutional rights to distribute literature on the streets and from door to door by the defendants' greatly hindering and stopping the above described work of Jehovah's witnesses in said municipality. That defendants' acts and threatened acts above described have produced and will produce great and irreparable injury and loss to plaintiffs and all others of Jehovah's witnesses by depriving many of them of their means of livelihood, which is solely preaching the gospel, and by depriving many others of their rights of free speech, free press, free assembly and freedom to worship and obey the written commands of ALMIGHTY GOD; all of which constitutes gross and flagrant violation of plaintiffs' civil rights.

19. Plaintiffs and all others of Jehovah's witnesses say that they are without adequate remedy at law and that the trespasses of defendants above described are continuous. That only a suit for injunctive relief will stop such unlawful conduct of the defendants and it is only by injunctive process of this court that plaintiffs can enjoy, exercise and practice their "civil rights" of free press, free speech, freedom of assembly and freedom to worship Almighty God publicly, and it is necessary that such injunctive relief hereinafter asked be granted so as to properly and adequately protect plaintiffs and all others of Jehovah's witnesses in their exercise of these rights. The granting of an injunction herein will prevent a multiplicity of suits and actions at law in which said plaintiffs cannot be adequately protected, and will prevent the above described disgraceful, unlawful, totalitarian, Nazi, and un-American conduct on the part of defendants and restore said defendant municipality to its due and proper status as a community within the United

States of America and prevent such municipality's being run and controlled in a tyrannical and Nazi manner.

20. That there is nothing in the faith of the plaintiffs or in their practices based upon that faith, or in their preaching and publishing, that is contrary to the public morals or that injuriously affects, in any way, the public health, safety, morals or welfare; and the work of said plaintiffs individually, under direction of said Watchtower corporations, is done benevolently, in the public interest, unselfishly, and without any commercial objective on the part of either the plaintiffs collectively or individually or the said Watchtower corporations, is done solely to convey to the people the said beneficial message of the Kingdom of ALMIGHTY GOD in obedience to His written commandment and is done solely to perform actual worship of ALMIGHTY GOD in spirit and in truth.

21. Plaintiffs show that in order to prevent continued abridgment of their aforesaid rights, pending a final hearing of this cause, it is necessary that this court grant and issue a temporary restraining order or preliminary injunction (to become permanent on final hearing) against said defendants, their officers, agents, servants and employees as hereinafter prayed for.

WHEREFORE

plaintiffs move the court to grant and issue an interlocutory or preliminary injunction, after notice to the defendants, restraining each of the above named defendants, their officers, agents, servants and employees, from enforcing the ordinance aforesaid as to plaintiffs and all others of Jehovah's witnesses, and from arresting and prosecuting plaintiffs and others of Jehovah's witnesses on account of their activity in distributing said books, booklets and periodicals within aforesaid municipality, and plaintiffs further pray that this Court, upon a consideration of this bill of complaint, order the application for a preliminary injunction or temporary restraining order above prayed for and contained herein, to

be set down at a fixed time and place for hearing before this Court; and that notice issue unto each of the defendants, commanding them to appear at such time and place and show cause, if any they have, why the preliminary or temporary restraining order restraining defendants, their officers, agents, servants, and employees, from enforcing said ordinances as to plaintiffs and others of Jehovah's witnesses on account of their activity in distributing aforesaid literature should not be granted as prayed for by plaintiffs. Plaintiffs further pray that upon a final hearing this Court enter an order declaring said above described ordinance invalid and void under the Fourteenth Amendment to the Federal Constitution to which said ordinance is contrary and repugnant as construed and applied to plaintiffs' activities, and also declaring said ordinance void on its face because of vagueness and indefiniteness, and because it has been so construed and applied and will be so construed and applied by defendants to deprive plaintiffs and others of Jehovah's witnesses of their right to exercise and enjoy freedom to worship ALMIGHTY GOD in accordance with the dictates of conscience, and their "civil rights" of freedom of speech, of press and of assembly. Plaintiffs further pray that said preliminary injunction be made permanent upon a final hearing, restraining the defendants, their officers, agents, servants and employees from enforcing said ordinance as to plaintiffs and others of Jehovah's witnesses and from arresting and prosecuting plaintiffs and others of Jehovah's witnesses on account of activities aforesaid in distributing books, booklets and magazines. Plaintiffs further pray for such other and further relief as they may show themselves justly entitled to in the premises.

HAYDEN COVINGTON

Attorney for Plaintiffs

117 Adams St., Brooklyn, N. Y.

TELEPHONE Triangle 5-1474

Designation

I, HAYDEN COVINGTON, Attorney for Plaintiffs in the above entitled cause, HEREBY DESIGNATE Theodore A. Epstein, Attorney and Counselor of this Court, whose address is Grant Building, Pittsburgh, Pennsylvania, to receive process and all notices required to be served upon me under rules of this Court:

HAYDEN COVINGTON

THEODORE A. EPSTEIN
Attorney for Plaintiffs

ALBERT R. GUNDECKER
as Plaintiff

COMMONWEALTH OF PENNSYLVANIA, County of Allegheny, ss:

Albert R. Gundecker, being first duly sworn upon his oath, deposes and says that he is plaintiff in the above entitled cause, that he has read the foregoing bill of complaint which he has signed as plaintiff, that the facts stated therein and all exhibits included therein are true of his own knowledge, except as to such statements therein as are made on information and belief, and as to such statements he believes them to be true.

ALBERT R. GUNDECKER
Affiant

Subscribed and sworn to before me
this 11 day of January, 1941.

ELSIE FRITSCHÉ

Deputy Clerk

Answer to Complaint**UNITED STATES DISTRICT COURT**

WESTERN DISTRICT OF PENNSYLVANIA

Pittsburgh Division

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Plaintiffs*,

v.

No. 1206
Civil Action

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania),
Defendants.

The defendants, City of Jeannette, a municipal corporation, and John M. O'Connell, individually, and as Mayor of the City of Jeannette, by way of answer to the plaintiffs' complaint, say:

1. The defendants deny the existence of a federal question, and deny that the complaint states any cause of action arising under the Constitution and laws of the United States, and deny that the same involves purely and solely civil rights under and by virtue of the Civil Rights Act of 1871 and Section 24 (14) of the Judicial Code, otherwise known as 28 U.S.C.A. 41 (14), and aver that the District Court is without jurisdiction, and respectfully pray that the action be dismissed.

2. The averments of the second paragraph of the complaint are admitted.

3. The averments of the third paragraph of the complaint are admitted.

4. The averments of the fourth paragraph of the complaint are admitted.

5. Defendants deny the right of the plaintiffs to maintain said action either as individuals or as a class action.

6. Defendants know nothing about the religious beliefs or activities of Jehovah's Witnesses, and deny the materiality of the same, and aver that at least some of the plaintiffs have in the past engaged in the purely commercial enterprise of hawking and vending and peddling from door to door in the City of Jeannette, certain books and merchandise which are sold by members of the group at a profit which ranges as high as four hundred per cent.

7. Defendants deny the materiality of the averments contained in the 7th paragraph, and aver that insofar as the activities of the plaintiffs or members of their groups have been confined to the activities set forth in the 7th paragraph they have not been and will not be interfered with in the City of Jeannette.

8. The averments contained in the 8th paragraph are denied, and on the contrary the defendants aver that most of the literature either passed out or sold by the plaintiffs and their group is a groundless defamatory and libelous condemnation of all religious organizations other than their own as racketeers. The defendants particularly deny that no part of the contents of such literature advocates overthrow of government by force or violence or by unlawful means, and deny that the same does not interfere with the governments of various nations on earth, but aver on the contrary that some of the plaintiffs openly advocate resistance to establish laws of Pennsylvania and set up a code which they regard as supreme for the laws of the United States or any of its States.

9. The averments contained in the 9th paragraph are denied, and defendants aver that at least some of the plaintiffs and their group have in the past engaged in the purely commercial activity of selling books and merchandise from door to door in the City of Jeannette.

10. Defendants deny that they, either individually, or by or through their agents, servants and employees, and for the purpose of suppressing the lawful and benevolent activities of the plaintiffs, and many other of Jehovah's witnesses, and to deprive them of liberty to exercise their rights of freedom to worship Almighty God, freedom of speech, press and assembly, have caused the arrest of the plaintiffs and other persons, known as Jehovah's Witnesses, and aver on the contrary that some of the leaders of the plaintiffs have sought, by intimidation and threats, to prevent the enforcement of lawful ordinances of the City of Jeannette.

11. Defendants admit that paragraph 11 quotes the portions of Ordinance No. 60 of the City of Jeannette under which some of the plaintiffs have been arrested, and aver that the provisions of said ordinance and the evidence upon which some of the plaintiffs were convicted under said ordinance, have been passed upon and approved by the Court of Quarter Sessions of Westmoreland County, Pennsylvania, the Superior Court of Pennsylvania, and the Supreme Court of Pennsylvania. The defendants further aver that the Supreme Court of the United States has also inferentially approved said ordinance as a lawful exercise of the police power of the City of Jeannette and approved the evidence under which some of the members of Jehovah's Witnesses have been convicted by refusing to grant a certiorari (Commonwealth v. Stewart, No. 722 Oct. Term 1939 in the Supreme Court of the United States). The defendants deny that they have ever arrested or prosecuted the plaintiffs, or any other persons, for exercising the right of free press, free speech and/or freedom to worship Almighty God.

12. The averments contained in paragraph 12 are denied as stated. The defendants deny that "many cases are pending against the plaintiffs under said ordinance", but admit there are some cases awaiting argument and decision in the Superior Court of Pennsylvania and in the Quarter Sessions Court of Westmoreland County, but aver that said cases will be reached and disposed of in their proper order

as will all other cases. Defendants deny that the plaintiffs or other member of Jehovah's witnesses were arrested and convicted when not guilty of any crime or wrong, and deny that they were compelled to remain in jail for long periods of time while waiting for bond and perfecting appeals from wrongful convictions under filthy, unhealthy and unsanitary conditions, and aver on the contrary that the plaintiffs and other members of this group were extended many more courtesies than their own conduct warranted. Defendants deny that the plaintiffs were ever falsely arrested or compelled to undergo a mock trial or that they were denied their rights of freedom of speech, of press, and of worship by the defendants, or either of them, in the wrongful application of said ordinance, and aver on the contrary that both the ordinance and the evidence upon which some of the members of Jehovah's witnesses were convicted has been upheld by the Supreme Court of the United States. Defendants deny that the plaintiffs, or any of them, have undergone any burden of expense, and aver on the contrary that all the expense of defending any actions brought against members of Jehovah's witnesses for selling literature of the Watch Tower Bible & Tract Society is borne and paid by said Publishing Company.

13. The averments contained in paragraph 13 are denied. Defendants aver, as hereinbefore more particularly set forth, that members of Jehovah's Witnesses have been and will be arrested only for hawking and peddling without permits in violation of the law.

14. Defendants deny that the plaintiffs are now or ever have been threatened with being unlawfully arrested or falsely charged with any offense.

15. Defendants deny that the plaintiffs or other members of Jehovah's Witnesses have any desire to be free without molestation from the defendants to worship and serve Almighty God, and on the contrary aver that what they desire is free advertising and publicity, and the right to vend and sell the publications of the Watch Tower Bible and

Tract Society in plain violation of the laws.

16. Defendants admit the right of the plaintiffs to distribute literature from door to door and on the streets of Jeannette and have been protected and defended in this right even to the extent of permitting members of Jehovah's witnesses to pass out untrue and defamatory literature concerning the defendant, John M. O'Connell, and concerning the Courts of Westmoreland County. The defendants deny that the plaintiffs apprehend or have any basis for apprehending any false arrest, malicious prosecution or deprivation of any of their civil liberties.

17. Defendants deny that Ordinance No. 60 of the City of Jeannette is unconstitutional either as written or as construed and applied by the defendants against the plaintiffs, and deny that it has ever been or will be used to deny the plaintiffs and other members of Jehovah's witnesses their civil rights of freedom of speech, or press, of assembly, and freedom to worship Almighty God.

18. Defendants deny that the plaintiffs and other members of Jehovah's witnesses have been interfered with and frustrated in the exercise of any of their constitutional rights.

19. Defendants deny that they, or either of them, have ever trespassed upon any of the plaintiffs' rights and deny that they are without an adequate remedy at law, and aver on the contrary that every conviction of any members of Jehovah's witnesses has been promptly appealed to a proper tribunal.

20. The averments contained in paragraph 20 are denied, and on the contrary it is averred that much of the literature of the Watch Tower corporations is defamatory and libelous and calculated to incite breaches of the peace. The defendants further aver that it has been in the past and will be in the future concerned only with the commercial activity of the plaintiffs or members of their group.

21. The defendants aver further that equitable relief should be denied the plaintiffs for the further reason that

they and their superiors have been and are distributing and spreading false and defamatory literature; that counsel for Jehovah's witnesses have in the past attempted to distort and falsify records of cases on appeals from convictions; that they and their superiors have in the past, by intimidation and threats, sought to interfere with the orderly enforcement of the laws of the City of Jeannette; that they and their superiors have constantly and persistently flouted and interfered with the rights of citizens of Jeannette to be free in their homes from interference and annoyance of unwelcome and unwanted rude and insolent purveyors of libelous literature, and they and their superiors have denied to others the right of religious freedom which they so stoutly claim for themselves.

WHEREFORE, the City of Jeannette and John M. O'Connell, as an individual, and as Mayor of said City, respectively pray that the complaint of the plaintiffs be dismissed.

FRED B. TRESCHER

Solicitor for City of Jeannette

KUNKLE, WALTHOUR & TRESCHER

Attorneys for John M. O'Connell

Transcript of Testimony

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Robert L. Douglas, et al, Plaintiffs,

v.

No. 1206
Civil Action

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, individually and as Mayor
of City of Jeannette (Pennsylvania)

HARRIET COLE THOMAS

Official Reporter

467 Union Trust Building
Pittsburgh, Pa.

Filed August 18, 1941
G. H. BERGER, Clerk

And now, Friday, February 21, 1941, at 10:00 o'clock A.M.,
the above entitled cause came on for hearing before Hon.
Robert M. Gibson, Judge, at Pittsburgh, Pennsylvania.

COUNSEL PRESENT:

For the Plaintiffs:

HAYDEN C. COVINGTON, Esq.
117 Adams Street, Brooklyn, N. Y.

THEODORE EPSTEIN, Esq.

For the Defendants:

F. B. TRESCHER, Esq.

CHARLES R. HESSLER, a witness produced on behalf of the plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Covington:

- Q Kindly state your name, sir.
 A Charles R. Hessler.
 Q Where do you live?
 A Cōraopolis.
 Q How long have you lived here in the Commonwealth of Pennsylvania?
 A Five years; I was born here, but recently I have been here for five years in this district.
 Q Before you moved to Pennsylvania the last time, where did you live?
 A New Jersey.
 Q And were you born and raised here in Pennsylvania?
 A Yes, I was.
 Q Which is now your home, Pennsylvania, at present?
 A Yes.
 Q What is your profession or occupation, Mr. Hessler?
 A I am an ordained minister of Jehovah God.
 Q Are you connected with Watchtower Bible and Tract Society?
 A Yes; I am a representative of Watchtower Bible and Tract Society in the capacity of zone servant.
 Q Will you kindly explain to the Court what Watchtower Bible and Tract Society is? What is its work?
 A Watchtower Bible and Tract Society is a corporation incorporated for the purpose of disseminating Bible truths in various languages by means of publications, of tracts, books, booklets, pamphlets, and other religious documents that the Board of directors may deem expedient from time to time.

Q Now, explain who Jehovah's witnesses are and their connection with the Watchtower Bible and Tract Society.

A Jehovah's witnesses are Christian men and women, who are wholly and entirely devoted to the service of Almighty God and have covenanted with Him to serve Him and do His will and to follow in the footsteps of Jesus, and the Watchtower Bible and Tract Society is used by these Christian men and women as publishers to assist them in disseminating Bible truths to the people.

Q How long have you been connected with the Watchtower Bible and Tract Society, and how long have you been one of Jehovah's witnesses, in that capacity?

A I have been one of Jehovah's witnesses twenty-three years; I have been a representative of the Watchtower Bible and Tract Society for over twenty years.

Q You say your position now is that of zone servant?

A That is right.

Q How long have you been connected with the Society, in that capacity?

A Since about 1938 as zone servant.

Q And before that did you have any other connection with the organization, in the local company here in Pittsburgh?

A Prior to that time I was company servant of the Pittsburgh company of Jehovah's witnesses.

Q Now, will you kindly explain to the Court the nature of your duties, and in detail your connection with Jehovah's witnesses and the Society in your capacity of zone servant?

The Court: Aren't we getting a little out of the line of inquiry, Mr. Covington? After all, the only question here is whether these ordinances encroach upon constitutional rights.

Mr. Covington: I was just leading up to that, to show his connection with this particular case and how he comes to know the facts.

The Court: All right: Limit it to that effect as a preliminary. Go ahead.

Q Would you kindly explain the nature of your duties as zone servant?

A Well, the Jehovah's witnesses throughout the earth are organized into groups or companies, where they co-operate one with the other in order to take to the people information concerning God's kingdom in printed form, and this they endeavor to do in an efficient and orderly manner. And to assist them in carrying on this work in such a manner zone servants have been appointed to visit these various groups from time to time and to render such assistance that this work may be carried on in such thorough manner that every home in the communities in which those witnesses work may be visited regularly at least three or four times a year and the people given an opportunity to receive this information concerning God's kingdom.

Q Now, are there companies in Westmoreland County, Pennsylvania, of Jehovah's witnesses?

A Yes. In Western Pennsylvania there are companies in the vicinity of Westmoreland County and in Allegheny County cover that community.

Q Now, do you have supervision, as zone servant, over the activity of Jehovah's witnesses in Westmoreland County?

A Yes.

Q Including the city of Jeannette?

A Yes.

Q Would explain how the work of Jehovah's witnesses has been carried on in the past in the city of Jeannette, before this trouble came up? In what manner do they carry it on—from door to door?

A Jehovah's witnesses visit the people in the different communities at regular intervals. They call upon them with the message of the Kingdom in printed form. They use phonographs to present that message in addition to

the printed books and booklets, pamphlets; and they encourage and stimulate home Bible study by inaugurating group Bible studies.

Q Now, are Jehovah's witnesses ordained ministers of the gospel?

A Yes.

Q Each one?

A They are.

Q Will you kindly explain the nature of the ordination and the reason therefor, and what its connection is with door-to-door work?

A When a Christian—when a man or woman consecrates themselves to do the will of God they enter into a covenant relationship with Him. In 1st Peter 2: 21 is stated the fact that Jesus left them an example to follow in his footsteps—

The Court: Now, just let us stop. We are getting clear out of line. If he wants to explain how their literature, and so forth, is disseminated, and so on, that is all right; but we are not particularly interested in the religious feature of it, it is the constitutional right that you appeal to here, that is in question here.

Mr. Covington: Now, I would like to make this observation, for the benefit of the Court. The defendants contend that the plaintiffs are required under the law to secure a permit. Now, one of the reasons that the plaintiffs assert that they are not required to secure a permit is because they are ordained ministers of Jehovah God and of the gospel.

The Court: I know, but how about rendering unto Caesar the things that are Caesar's—incidentally, in that connection?

Mr. Covington: Well, we will get to that, too.

The Court: Well, we will not hear it, Mr. Covington. You must stick to the one question. You have come here and have attacked these ordinances, as you have a perfect right to do—claiming, of course, that they infringe

upon your constitutional rights. Now, we will assume for the purposes of this case that Jehovah's witnesses, in so far as they are concerned, are perfectly sincere in their beliefs and have a right to maintain those beliefs in a legal way. The only question we are interested in is with respect to these ordinances, and we do not want to get a lot of matter in the record in connection with the religious feature, because we are not interested in this suit in it.

Mr. Covington: Now, may it please the Court, we assert that this statute, as construed to apply, deprives the plaintiffs and all other Jehovah's witnesses of their right of worship of the Almighty God under the Constitution: and in order to prove that, I submit respectfully that we have a right to offer proof to show wherein the right of worship of the Almighty God has been denied them, and it is necessary to explain and show that they are ordained ministers of Jehovah God; and to exclude that character of evidence from the record would, to my estimation, be error, and if it is excluded it would, to my estimation, amount to a denial of that right. It would take only a few minutes, no one would be injured by it, and I submit it is material for that reason.

The Court: I suppose the best way out of it, to save time, is to "give you your head". Go ahead.

Mr. Covington: It is not merely a question of saving time, because I think it is very material.

The Court: I don't think it is at all, because you are appealing to a civil right, the right of Jehovah's witnesses and everybody else. Jehovah's witnesses have just as much right as any other citizen and no more.

Mr. Covington: That is absolutely the truth, and we don't ask for any more than that either.

Q Now, we will ask Mr. Hessler to state briefly how and wherein Jehovah's witnesses are ordained ministers of Jehovah God and of the gospel of God's Kingdom, and the connection that that has to their doing of the work

from door to door as such ordained ministers.

A. Well, having covenanted to do the will of Almighty God and follow the footsteps of Jesus, they are thereby commanded to do the same kind of work that Jesus did, that is, preach the gospel of God's Kingdom. Jesus said the gospel of God's kingdom would be preached, must be preached, in all the world; and therefore they are commissioned and anointed and ordained as ministers of Almighty God. And that ordination is found in Isaiah, 61st chapter, first and second verses. And Jesus and the apostles went from door to door, from village to village, preaching the gospel of the Kingdom; and Jehovah's witnesses do the same. We are living in a modern age, and we do this work quickly and efficiently with our books and booklets in various languages, some eighty-three languages.

Q. And why are the books employed instead of conversation?

A. In order to save time and enable the people to at their leisure find in the Bible the things they should know at this particular time.

Q. I will ask you: The activity of Jehovah's witnesses in Jeannette has been under your direction, has it not, Mr. Hessler?

A. Yes.

Q. Do you know of your own knowledge the nature and how the activities were pursued in Jeannette?

A. In bringing it down to this case; in March nineteen—1939, in March, the 12th or the 19th—but anyway, it was in March, 1939, there was some of Jehovah's witnesses going about their work—

Q. In what way?

A. In Jeannette, visiting the home and exhibiting to them messages of the Bible in printed form, and they were arrested and interfered with. Well, in order to cover that community, another group went in there on April 2d—

Q Now, just before we get to that, Mr. Hessler, do you know the defendant John M. O'Connell?

A Yes, I do.

Q How long have you known him?

A Ever since March and April, 1939.

Q And how did you come to get acquainted with Mr. O'Connell?

A Well, when those Jehovah's witnesses were arrested in March, 1939, I attended the hearing.

Q Now, subsequently to that did you direct—or rather, did Jehovah's witnesses go back to Jeannette for the purpose of preaching the gospel of God's Kingdom as you have described?

A Yes, they did.

Q Now, before they went there, did you contact Mayor O'Connell?

A In order to clear up any misunderstanding that might have existed in the minds of the police officials and of Mayor O'Connell, we delivered a letter to the chief of police and the mayor, explaining the nature of our work, so that there would be no misunderstanding.

Q And identifying the individuals that were coming into town that day?

A Yes.

Q Will you kindly look at that document that I show you (handing paper to witness), and I ask if you have ever seen that, or the original thereof?

A Yes; I delivered the original letter to the chief of police and also gave the copy, after the chief refused to accept it, to Mayor O'Connell.

(Said paper marked Plaintiffs' Exhibit No. 2)

Q Will you kindly explain to the Court what happened on the occasion of the delivery of that letter?

A We delivered the letter to the chief of police, and he became very angry when he found that Jehovah's witnesses were again visiting the people in Jeannette. He said we would have to go out, round them all up and stop,

or they would all be arrested. We showed him the letter; he didn't want to accept it. We read the letter to him, because the letter very clearly explains the work, why we are there, gives the Scriptural citations given to Christians, and he stated then we would have to see Mayor O'Connell. We visited Mayor O'Connell's home, he was on his way to the police headquarters, the municipal building, at the time; and we returned there also. We gave the letter to him. The letter was discussed. The mayor stated that we were acting in a defiant manner; we explained we were not doing so, we had come there in an orderly way, and we had brought this letter to clear up the misunderstanding or misapprehension that he was laboring under that we were peddlers and hawkers, and explained to him that we had brought over a hundred people into the community that day, in order that the homes might all be visited quickly; and if he would just refrain from interfering in two or three hours the community would all be done. He stated that many people were calling up and phoning and complaining, and we suggested that he follow the same example they do in other communities—invite the one who is making the complaint to come down and sign the complaint, and bring forth evidence that a violation of the ordinance is being made, and the responsibility would then be upon that individual. We also called his attention to the fact that the Supreme Court ruled that the manner in which Jehovah's witnesses were doing this work was perfectly valid; that we had no objection to the ordinance as a commercial ordinance, but we did object to the misapplication of the ordinance to the work that we were doing. And then he stated, after a conference with the chief and several others, that we would have to either take out a permit or he would order the arrest of every one in Jeannette.

Q And that in spite of the proof that you had submitted to him in the form of this letter?

A Yes.

Mr. Covington: Would the Court like to have me read the letter now?

The Court: Oh, no, not now. It will be in evidence; the Court will read it in due time.

Q Now subsequently, Mr. Hessler, of your own knowledge, what happened in Jeannette? Were anybody picked up—arrested?

A Yes, there was twenty-one arrested that day. They were given a trial, eighteen of which—or three of them were released, because they were sitting in automobiles; but there was only evidence against one defendant where a money contribution had been received, and the man that testified—

Mr. Trescher: If the Court please, this is objected to. The record of what transpired in that case is the very best evidence of what occurred there.

The Court: Yes, this is not the best evidence. They were arrested and there was a hearing.

Q They were arrested and subsequently tried and convicted. Is that right?

A That is right.

Q And that case was appealed to the Quarter Sessions Court and appeal denied. Is that right?

A Appeal was denied.

Q And then appeal was taken from that order of denial to the Superior Court, and that appeal was dismissed, was it not?

A That is right.

Q On account of the failure to have attached to the original appeal papers a certified copy of the transcript?

A That is right.

Q And the case went to the Supreme Court of the Commonwealth and was refused?

A Yes, sir.

Q And then from there to the Supreme Court of the United States, and certiorari denied. Is that right?

A Yes.

Q And subsequently, Mr. Hessler, to April, 1939, have there been any other arrests of Jehovah's witnesses in Jeannette, under this ordinance?

A Since April, 1939?

Q Yes.

A Yes, there have been other arrests made. Last February, a year ago, there were a number of arrests. Those cases have been appealed and no action has been taken on that appeal.

Q Not as yet. Now, do you know how many persons all together have been arrested in and about Jeannette under this ordinance?

A There has been over thirty arrests, and there has been a number—fifteen or more—interfered with, taken in to the police headquarters and investigated and then let go.

Q Now, Mr. Hessler, the only thing that is distributed by Jehovah's witnesses in Jeannette is booklets and books. Is that correct?

Mr. Trescher: Well, let him say what was done. This manner of questioning is objected to, if the Court please.

The Court: Yes, it is leading.

Mr. Trescher: It is for the Court to conclude whether books were distributed or sold, and we feel the record should show exactly what was done, if this witness is capable of testifying.

Mr. Covington: All right—withdraw it.

Q Mr. Hessler, I show you a book entitled "Enemies". Have you ever seen that book before?

A Yes.

Q Who prints that book?

A Watchtower Bible and Tract Society.

Q Who distributes it?

A Jehovah's witnesses.

(Said book marked Plaintiffs' Exhibit No. 3)

Q I show you a book entitled "Reconciliation". Have you ever seen that book before?

A Yes; published by the Watchtower Bible and Tract Society, and distributed by Jehovah's witnesses.

(Said book marked Plaintiffs' Exhibit No. 4; and additional books marked respectively Plaintiffs' Exhibits Nos. 4 to 10, inclusive; also group of pamphlets and papers marked Plaintiffs' Exhibits Nos. 11 to 36, inclusive)

Q I show you the book entitled "Religion", being Plaintiffs' Exhibit No. 5, and ask you who prints that?

A Watchtower Bible and Tract Society.

Q And who distributes it?

A Jehovah's witnesses.

Q I show you Plaintiffs' Exhibit No. 6, entitled "Yearbook of Jehovah's witnesses for 1941", and ask you who prints and distributes that.

A Watchtower Bible and Tract Society; and Jehovah's witnesses distribute it.

Q I show you Plaintiffs' Exhibit 7, book entitled "Salvation", and ask you who prints that.

A Published by Watchtower Bible and Tract Society and distributed by Jehovah's witnesses.

Q Plaintiffs' Exhibit No. 8, entitled "Riches". Who prints and who distributes that?

A Published by Watchtower Bible and Tract Society, and distributed by Jehovah's witnesses.

Q Book of "Government", Plaintiffs' Exhibit 9?

A Published by Watchtower Bible and Tract Society and distributed by Jehovah's witnesses.

Q And book entitled "Preparation", Plaintiffs' Exhibit 10?

A Printed and published by Watchtower Bible and Tract Society, and distributed by Jehovah's witnesses.

Q I have a booklet "Satisfied", being Plaintiffs' Exhibit 11; booklet "Conspiracy Against Democracy", being Plaintiffs' Exhibit No. 12; booklet "Judge Rutherford Uncovers Fifth Column", being Plaintiffs' Exhibit No. 13; booklet entitled "Refugees", being Plaintiffs' Exhibit No. 14; booklet "Government and Peace", being Plain-

tiffs' Exhibit No. 15; booklet "Fascism or Freedom", being Plaintiffs' Exhibit No. 16; booklet "Face the Facts", being Plaintiffs' Exhibit No. 17; booklet "Protection", being Plaintiffs' Exhibit No. 18; booklet "Theocracy", being Plaintiffs' Exhibit No. 19; booklet "Who Is God?", being Plaintiffs' Exhibit No. 20; booklet "What Is Truth?", being Plaintiffs' Exhibit No. 21; booklet "Cause of Death", being Plaintiffs' Exhibit No. 22; booklet "The Final War", being Plaintiffs' Exhibit No. 23; booklet "Health and Life", being Plaintiffs' Exhibit No. 24; booklet "Home and Happiness", being Plaintiffs' Exhibit No. 25; booklet "Good News", being Plaintiffs' Exhibit No. 26; booklet "Where Are the Dead?", being Plaintiffs' Exhibit No. 27; booklet "His Works", being Plaintiffs' Exhibit No. 28; booklet "Angels", being Plaintiffs' Exhibit No. 29,—and I ask you who prints these particular exhibits?

A They are printed by the Watchtower Bible and Tract Society and distributed by Jehovah's witnesses.

Q I show you Plaintiffs' Exhibit No. 33, being "Consolation" of February 19, 1941; Plaintiffs' Exhibit No. 32, being "Consolation" of January 22, 1941; Plaintiffs' Exhibit No. 31, being "Consolation" of May 29, 1940; Plaintiffs' Exhibit No. 30, being "Kingdom News", October 1940; Plaintiffs' Exhibit No. 36, being "Watchtower", January 15, 1941; Plaintiffs' Exhibit No. 35, being "The Watchtower", February 1, 1941; and Plaintiffs' Exhibit No. 34, being "The Watchtower" of February 15, 1941,—and ask you who prints and distributes those particular exhibits?

A They are printed by the Watchtower Bible and Tract Society, and distributed by Jehovah's witnesses.

Q Now, except for the "Yearbook, 1941", has that particular kind of literature been distributed in Westmoreland County?

A Yes.

Q And in the city of Jeannette?

A Yes.

Q On the date of April 2, 1939, that was in what you call the "Watchtower Campaign"—is that correct—the way you explained it to me?

A That was a campaign of Jehovah's witnesses covering Jeannette and Greensburg and other communities in Westmoreland County.

Q And at that time you were offering the public—distributing the books "Fascism or Freedom"—and "Face the Facts". Is that correct?

A Yes.

Q That is, Plaintiffs' Exhibits Nos. 16 and 17?

A That is right.

Q Now, in a general way, can you for the record, in order that the record may intelligently show how those witnesses carry this work on, or would you demonstrate to the Court and to counsel how this door-to-door work is carried on in Jeannette?

A The home is visited, the bell is rung or a knock at the door, and a person comes to the door, and when he comes to the door is told that "I represent the Watchtower Bible and Tract Society"—or the statement is made "I am one of Jehovah's witnesses"—"and we have some very important information for you"—

Mr. Trescher: If the Court please, it seems to me this is going a little far afield. I am certainly willing to go to great length, as we have in the past, and allow all the latitude in the world, but the question here—as the Court has already indicated—is whether this ordinance itself in any way infringes the constitutional rights of these individuals, or whether the City of Jeannette is enforcing it in such a way as to infringe their rights. And how can a zone manager, a man who was not present when these arrests were made, know exactly what was done? The record of those convictions in the cases where there were convictions, and of the dismissal in the cases where there were dismissals, is the best evi-

dence of what was done; and I don't see we are going to help or derive any particular benefit by hearing this record. I have heard it before, and the Court has, too.

Mr. Covington: That is not the one that was played the other day. This is the one that was played in the Watchtower Campaign to those who were interested at that time. This is the way or manner of presentation. They say the facts constitute a sale, a commercial activity—

The Court: That I think is the most material phase of the inquiry here, but the trouble is the inquiry has been about everything else.

Mr. Covington: That is what we are getting down to right now.

The Court: Go ahead.

Mr. Covington: I think he has intelligently outlined the nature of this work. Now, here is the transaction that led up to these arrests, and it is for the Court to determine whether it comes within the provision of this ordinance.

The Court: I will admit it, subject to the objection and exception.

A (Continuing)—The person that answers the door is told that "I am one of Jehovah's witnesses"—

The Court:

Q You have seen this yourself?

A Yes; I have done that.

Q All right.

A (Continuing) We state we have very important information for them, and it will only take a few moments for them to hear it. (Witness plays record on portable phonograph which he has produced)

(Said phonograph record marked Plaintiffs' Exhibit No. 37).

Q Mr. Covington:

Mr. Hessler, at the conclusion of the presentation of that record, what does the witness next do?

A At the conclusion of the playing of the record the person is asked how they enjoyed it, and then a card is handed to the person to read, explaining how they may obtain "The Watchtower", which is published twice a month, twenty-four issues a year, and they have been given the opportunity at that particular time to receive a year's subscription for a contribution of a dollar, together with any one of the volumes free. If they didn't care to take "The Watchtower" at that time, their attention is called to the fact that any one of the bound volumes can be secured on contribution of twenty-five cents.

Q That is, any one of these bound volumes there, Exhibits Nos. 3 to 10?

A All except the book "Religion". If they didn't care for that, their attention was called to some of the booklets, and they were left, if they desired to contribute, three for ten cents; and on that particular occasion five cents for one of the small booklets; and if they still were interested—or rather, if they were interested, and had no money, we would gladly give them a free copy, and we endeavored to leave a copy at every home.

Mr. Trescher:

Q Do I understand Mr. Hessler purports still to be testifying to matters that are within his personal knowledge, as he told the Court with reference to that record?

A Yes.

Q You are?

A Yes.

Q Very well.

Mr. Covington:

Q Now, that is the way the work is carried on in Jeannette. Is that correct?

A Yes.

Q During the Watchtower Campaign. Now, how was the work carried on that particular morning of April 2d, in reference to these two booklets that were being dis-

tributed?

A By putting forth a special effort to leave a copy of the "Face the Facts" and "Fascism or Freedom" booklets in every home. And those who did not care to contribute could have the copy free, if they desired to read it.

Q That is, these Exhibits 16 and 17.

A Those who desired to hear the phonograph record would be given the opportunity to do so.

Q Now, you directed the activities in Jeannette at that time. Is that correct?

A Yes.

Q You were not personally present, were you, when the eighteen were arrested—or the twenty-one were arrested?

A I was at Jeannette at the time.

Q Now, they were arrested for the presentation of these two booklets—

Mr. Trescher: Now, just a minute. Tell us when this was.

Mr. Covington: April, 1939.

A April 2, 1939.

Q That is the morning they were presenting these two booklets alone, without the phonograph record.

Mr. Trescher: If the Court please, the record is the best evidence of what they were arrested for, what they were charged with, and what testimony was produced. This person could not have been personally present when eighteen people carried on their activities, as he testifies they did carry them on.

Q Did you see them when they were brought into the police station?

A I was at the police station when they were brought in—when some of them were brought in.

Mr. Trescher: We would like to renew our objection, if the Court please.

The Court: Well, as we have it thus far there is nothing in yet.

Q Now, at a later date there were some more arrests following that, some eight others later on?

A Yes; in 1940, February 25, 1940.

Q At that time how were the Jehovah's witnesses—were they using a different record at that time than the one entitled "Snare and Racket"?

A They were using the "Snare and Racket".

Q Now, why did not Jehovah's witnesses apply for a permit on either one of these occasions?

A Because, inasmuch as they are doing this work in obedience to the explicit command of Almighty God, of preaching the gospel of the Kingdom, to ask for a permit to do what someone has commanded would be an insult to the Creator, as His Law is supreme and above all human law.

Q Did this letter to Mayor O'Connell explain why you did not apply for a permit, mentioning the fact that you were ordained ministers?

A Yes, sir: very explicit.

Q And for that reason did not come within the terms of the ordinance. That is in the letter you delivered to him?

A Yes.

Q Did you ever have any conversation with Mayor O'Connell after either one of these arrests, as to his continued enforcement of this ordinance as to Jehovah's witnesses?

A Yes, sir, I did.

Q How many times have you talked with the Mayor about that?

A I have carried on conversation on several occasions.

Q Now, what if anything did the Mayor say about the enforcement of that ordinance as to Jehovah's witnesses in the future?

A I can't remember his exact words—

Q Well, in substance.

A (Continuing)—but he always gave me the impression that the ordinance was valid and they would continue to

enforce it as long as Jehovah's witnesses distributed literature in Jeannette and accepted a contribution.

Q And accepted a contribution for any of the literature distributed. Is that correct?

A Yes.

Q And did he say anything about anybody found in Jeannette in the future doing that work would be arrested?

A He emphasized the point that the ordinance would be enforced and they would be arrested.

Q Now, what effect, if any, has this had upon the activity of Jehovah's witnesses in Jeannette and that area in Westmoreland County?

A It has not only affected the work of Jehovah's witnesses, it has curtailed it but it has intimidated people of goodwill who reside in Jeannette; they are afraid to accept any of the literature, for fear that they would be reproached and misrepresented.

Q Have any such persons refused—

Mr. Trescher: It seems to me, if the Court please, that the testimony is far afield. It ought to be confined to some particular instance.

The Court: The only thing—I agree with you in large part, but this is not a case tried before a jury, and I think you will just have to trust the Court to get "the wheat from the chaff" at the end of the case, remembering exactly what the issues in the case are. I agree with you we are getting pretty far afield, but I will allow it; and rule on your objection later, of course.

Q Now, has the company of Jehovah's witnesses at Jeannette diminished, as the results of this?

A The company of Jehovah's witnesses in Jeannette has been dissolved for several years.

Q And has the number of Jehovah's witnesses in Jeannette diminished?

A And some of those who resided there have moved from the community, because of the reproach that has been heaped upon them and because of the activities of the

Jehovah's witnesses having been carried there and the continued arrests.

Q Now, you have had personal charge of the defense of all of these cases, that is, the employment of lawyers and the payment of fees and everything, have you not?

A Yes.

Q In these Jeannette cases, under this Ordinance No. 60?

A That is right.

Q Do you know how much has been paid out on account of these various cases that have been filed under this ordinance?

A Yes; it has cost Jehovah's witnesses in this vicinity at the present time over seventeen hundred dollars in legal costs and other printing expenses pertaining to the printing of briefs, and so on.

Q And the employment of stenographers, court stenographers, and so forth, in the defense of these cases?

A Yes, sir.

Mr. Trescher:

Q Do you have a record of that?

A I have a memorandum of it.

Q Do you have reference to Jeannette cases?

A Jeannette cases alone.

Mr. Covington:

Q Did you attend the trial of the eight that were arrested after the April arrests—that was in February, 1940?

A Yes.

Q Before Mayor O'Connell?

A Yes.

Q What literature was then being distributed and made the basis of the prosecution?

A The book "Salvation" was being presented.

Q At that time, Mr. Hessler, were the eight convicted then under the ordinance?

A Yes.

Q That is all.

CROSS EXAMINATION

Mr. Trescher:

Q Mr. Hessler, by whom are you paid?

A I receive \$25 a month from the Watchtower Bible and Tract Society toward incidental expenses; the rest of the money that I use in the way of living expenses I contribute myself.

Q And do you receive your money from the Watchtower Bible and Tract Society in the form of a check each month?

A Each month, if that is necessary; sometimes it is not necessary.

Q By whom are you employed?

A I am in the service—my time is entirely devoted to the service of Almighty God.

Q Who designates you as the zone manager?

A The Watchtower Bible and Tract Society.

Q And who in the Watchtower Bible and Tract Society designates you as the zone manager?

A Their Service Committee.

Q And where does the Service Committee meet?

A In Brooklyn, New York.

Q And when you speak of the Service Committee, do you refer to the committee that would correspond to the board of directors in another corporation?

A Well, it would be the group who passes on the qualifications of Christian men—

Q Well, tell me, Mr. Hessler, to what particular individual you are responsible?

A I am not responsible to any particular individual at all.

Q Well, with whom do you have your communications with the main corporation?

A The Watchtower Bible and Tract Society.

Q Is there some individual in connection with that that directs your work?

A The Zone Department, in charge of the zone servants.

Q The Watchtower Bible and Tract Society is a huge corporation, isn't it?

A Well, it is a large corporation.

Q Do you know the name of the individual that directs your work?

A Instructions are not signed by any individual. The names of individuals are subordinated in all the activities of the Watchtower Bible and Tract Society, as are Jehovah's witnesses. Letters of communications are not signed by any individual.

Q Are your checks signed by any individual?

A Yes.

Q Who is the individual that signs your checks?

A W. E. Van Amburg.

Mr. Covington: V-a-n, one word—A-m-b-u-r-g.

Q And where is the principal office of the Watchtower Bible and Tract Society?

A 117 Adams Street, Brooklyn, New York.

Q Does anyone else sign your checks?

A And N. H. Knorr—K-n-o-r-r.

Q Do you mean to tell this Court that the sum of \$25 a month is all that you receive as remuneration for your work?

A I don't even always receive \$25 a month from the Watchtower Bible and Tract Society; sometimes it is not necessary. But I am allowed the maximum of \$25 a month toward incidental expenses, and I don't always accept that.

Q You didn't answer my question, Mr. Hessler. I asked you whether that is all the remuneration you receive in connection with your work with Jehovah's witnesses?

A From the Watchtower Bible and Tract Society.

The Court:

Q He is not asking you that. Listen to the question. (Question read)

A Well, from time to time when I receive contributions

from any of the literature that I leave with the people, there is a differential between the amount contributed by me for those books and the amount I receive from the people.

Mr. Trescher:

Q All right. And what is that differential, Mr. Hessler?

A On the bound volumes it is five cents; the differential is twenty cents.

Q In other words, every book that you receive from the Watchtower Bible and Tract Society you pay or give them five cents. Is that right?

A That is right.

Q And when that book is distributed to a home—"distributed", as you call it—and you exact what you call a contribution from the person to whom you distribute it, the contribution that you exact is twenty-five cents, is it not?

A I don't exact it. We give the person with whom we are presenting the information the privilege of contributing twenty-five cents, but if that person would like to have that book, for which I contribute five cents—if they would like to have it and are unable to pay, I gladly give it to them free. As a matter of fact, I give more books and booklets away than I receive a contribution for.

Q Well, as a matter of fact, when you get contributions—and I think the records of these cases show that none of your salesmen parted with books without getting contributions—but when you do get contributions, the contribution that you ask for is twenty-five cents, is it not?

A We have a set contribution from the public, a stipulated contribution, of twenty-five cents, but the person who is presenting it is free to give it to them without any contribution, if they so desire.

Q Do you have any record, Mr. Hessler, as to how many books per month you get from the Watchtower Bible and Tract Society on those terms?

A Yes, I do have a record.

Q Where is that record?

A I don't have it here.

Q And can you tell the Court how much your profits average per month from the distribution of these books?

A Yes.

Q How much?

Q About—because of the much time that is required by me to assist Jehovah's witnesses in this community, on account of the many arrests that have occurred, the amount of contributions that I have received for literature run between two, three, four dollars a month, and the profit of that would be much less than that.

Q You mean the total?

A Yes.

Q Do you mean to say that you live on twenty-five dollars plus the four dollars of contributions that you say you get?

A No, I didn't intimate that or state that. I stated that the amount of money that is used for my living expenses I use out of my own personal fund.

Q Well, I think you still haven't answered my question, Mr. Hessler. What I want to know is how much remuneration you receive from all sources for what you call the distribution of the literature of the Watchtower Bible and Tract Society.

A Well, as I stated, the maximum amount in any one month that I receive from the Watchtower Bible and Tract Society toward incidental expenses has been \$25 a month, and the contribution—

Q How much do you receive from all sources from your connection with Jehovah's witnesses—

A From time to time I have gasoline furnished me for operating a car, but the amount of contribution that I receive from literature, as I stated before, between two, three, four dollars a month.

Q All right. How much do you receive from all sources?

Q Well, not more than probably \$40 a month at the maximum.

Q You have no other occupation?

A No; devoting all my time to this work.

Q And you have done that for twenty years.

A I have not devoted all my time to that; I have devoted the last five years exclusively to this.

Q And you have no home, that is, you don't own a home in this vicinity?

A I have a trailer, I own a trailer.

Q And you live there, and you have a family, I believe?

A Yes.

Q And you mean to say that all of your activities, operating your automobile and traveling to these various places, your living expenses do not cost you more than forty dollars a month?

A I did not say that.

Q You didn't say that?

A No; I said that is what I receive, the maximum. The rest of the money necessary for me to operate my car and pay my living expenses I use from my own personal fund.

Q Do you mean to say that you are independently wealthy?

A No, I didn't say that.

Q And that you have an income that is independent from your income from Jehovah's witnesses?

A No, I didn't say that. I stated I have used it from my personal fund, money that I had when I was working at secular work.

Q You don't mean to tell the Court here you have enough of a personal income to keep you?

A I am not telling the Court anything. I am just answering your questions.

Q In other words, you don't want the Court to know how much money you are getting from Jehovah's witnesses, do you?

A No, I am being very frank and telling you, and for the

Court's information, that the amount of contributions is away below what it costs me to live, that the money I use for living expenses comes from my own personal fund—

Q All right. Where is this personal fund that you have? Is it in a bank?

A Some of it, yes.

Q Well, what bank is it in?

A Well, some of it is in the Peoples Trust Company.

Q Where?

A In Pittsburgh.

Q Do you have a savings account there?

A Yes.

Q You mean—

A Checking account.

Q A checking account there as well. And that belongs to you personally?

A Yes.

Q And you have derived none of it from your work in connection with Jehovah's witnesses?

A No, sir, not a bit.

Q Not a cent of it. And do you have any income from that account?

A No, I do not.

Q That is, it doesn't bear interest?

A No.

Q And how long have you had that account?

A Ever since I have been in Paterson—or Pittsburgh.

Q And you have been a zone operator for twenty years, haven't you?

A No, I have been a zone servant since 1938, but I have been associated with the Watchtower Bible and Tract Society as one of Jehovah's witnesses for over twenty years.

Q And as one of Jehovah's witnesses, you were engaged in the sale of this literature?

A The distribution of this literature.

Q What you call the distribution. And that has been your only income for over twenty years, hasn't it?

A No, I didn't state that; I said I have devoted all my time for the last five years. Prior to that I was in the laundry business for twenty-three years.

Q Where was that?

A In Paterson, New Jersey.

Q And you left that and devoted—

A And devoted all my time to the service of Almighty God.

Q You say you have a checking account in the Peoples Trust Company, Pittsburgh?

A Yes.

Q And that has no income?

A No.

Q And that you have no income from your connection with Jehovah's witnesses other than the \$40 a month?

A That is the maximum; in fact, it isn't four dollars a month.

Q And does that cover all expenses in connection with your activities?

A No, not at all; it doesn't begin to.

Q It doesn't begin to. Now how much does it cost you to carry on all your activities in connection with Jehovah's witnesses?

A Well, anywhere from \$60 to \$85 a month.

Q All right. Where do you get that money?

A From my personal fund.

Q From money that belongs to you?

A Yes, certainly, from money that belongs to me.

Q And from money that was not derived from your connection with Jehovah's witnesses?

A Money that I worked and earned, worked with my hands and earned.

Q Before you became a worker in connection with the Jehovah's witnesses?

A Well, I have been continuously engaged in connection with Jehovah's witnesses. While I was engaged in the

laundry business I was a company servant and used my time and my energy working, passing out this information to people of good-will that were interested.

Q So that there may be no misunderstanding about it later, you say that the maximum that you receive from all of your activities in connection with Jehovah's witnesses, whether from the Watchtower Bible and Tract Society, or from distribution—as you call it—of literature, or from companies which the Watchtower Bible and Tract Society maintains, is \$40 a month?

A In fact, it is less than that. When I was giving it to you I was being elaborate.

Q That is the maximum?

A That is right.

Q And that has been the maximum for the past five years?

A Two years past; two years.

Q Prior to that time did you get more?

A No; I was using my own money entirely, but inasmuch as zone servants were inaugurated in 1938, and there were certain traveling expenses recognized as necessary, an allowance was made of \$25 a month.

Q Now then, the Watchtower Society—or Corporation—does maintain companies in this vicinity, does it not?

A Yes.

Q And some of them are incorporated. What companies exists in your zone?

A There are about nineteen of them.

Q And what do those companies pay for the literature of the Watchtower Society?

A The books are shipped to them, and when they leave them with the public they remunerate the Watchtower Bible and Tract Society for a volume at twenty cents.

Q What does the company get out of it?

A The publishers are allowed—there is a difference of five cents, because it is recognized the publishers give many of them away, and that money is used—

Q All right. Just tell me what the company gets out of it?

A Well, in some cases they get five cents, and then in other cases they don't get that; they give it—the publishers get it.

Q Well, again I must ask that you answer the question. How much does the company get out of it?

A In most cases they just get the twenty cents that they return to Brooklyn; in a few cases, where the publisher instead of contributing the twenty cents for the books they contribute the whole twenty-five cents; but those are only in a few instances, where they have some operating expenses, like renting a hall, and so they voluntarily contribute those five cents, in order to defray those various expenses.

Q These various companies keep records, don't they?

A Yes.

Q The Watchtower Bible and Tract Society doesn't send these books out without knowing where the money is coming from?

A They ship them on consignment.

Q On consignment, yes. So that these books are distributed sometimes to the companies on consignment?

A Yes.

Q And then the company makes its contributions to the Society after the books are turned over and after a contribution is exacted from the person who in turn distributes them to homes—isn't that right? And the person who goes to a local company and takes out so many books may also charge his contribution, may he not—that is, he doesn't have to have the money right there, he can get credit for his contribution, as you call it?

A That is right.

Q And after he goes out and disposes of these books and receives contributions from the people in the homes, he then takes that money and discharges that—I don't know whether you call it a debt or not, but what we would ordinarily call a debt—

A An obligation.

Q (Continuing)—An obligation, yes—by paying over the money?

A And he does that if he gives the book away, he discharges the obligation just the same.

Q So that the only substantial difference between what you do and what the ordinary merchant does is that you call the thing a contribution or a distribution, while the ordinary merchant calls it a sale. That is right, isn't it?

A You wouldn't call it a sale—

Q I know you wouldn't call it a sale; but that is the only difference? It is a matter of terminology, as far as you are concerned?

A We are leaving them with the people for a contribution in order that they may have a share in publishing similar books, to help some other people get the information.

Q You don't mean to say when you were in Jeannette in 1939 your agents or representatives played this record "Instruction" or "Miracles", which you have presented here in court and identified as Exhibit No. 37?

A No,—

Q You did not?

A Some of them had that, not all of them.

Q You don't mean to say that was played in Jeannette, do you?

A Well, I assume—they were endeavoring to play it.

Q You told the Court a while ago you knew it was played, you stood there and observed it. You don't know whether this record was played or not?

A No, the Court asked me, and I understood the Court to ask me if that was the method we employed; we were demonstrating to the Court the method we used in Jeannette, and at that time we had a campaign for the "Watchtower", and some of the Witnesses were using phonographs, they carried phonographs in the car, and if they had the opportunity to use it they used it.

Q And you don't know whether this record "Instruction"

was played or not, do you?

A I know that they were—an effort was made to play it, because they had the opportunity.

Q Mr. Hessler, you know the record they were playing out there was called "Religion as a Snare and Racket"—or some such record?

A Yes; in February, 1940; that is the record that was used, yes.

Q And how about April, 1939?

A We were not using that record.

Q You were not using a record?

A We were not using that record, "Snare and Racket".

Q Now, this phonograph you furnished here in court, who provides those for the various representatives who work at the doors of the people?

A The Watchtower Bible and Tract Society.

Q They are not supplied at the sole expense of the Watchtower Bible and Tract Society, are they?

A For any worker that wants them, for a contribution of \$8.

Q Yes, the worker making a contribution.

A That is, the publisher that uses it makes the contribution.

Q And anyone who wants to be an ordained minister, and take these books from door to door, to exact contributions for them, may be an ordained minister, may he not?

A Only providing he has made a covenant of consecration to do the will of Almighty God and has a desire to follow in the footsteps of Jesus and preach the gospel of His Kingdom, we are glad to assist them.

Q Well, you are authorized to ordain ministers, aren't you? That is part of your work?

A I beg your pardon?

Q I say, you are authorized to ordain ministers, aren't you?

A No, I am not.

Q. You are not?

A. An ordination comes from—one receives their ordination from Almighty God, and men who recognize that an individual has made a consecration to follow in the footsteps of Jesus, and devote his life to the service of the Lord, why, the Watchtower Bible and Tract Society, on recommendation of company servants and zone servants, will recognize that individual as one of Jehovah's witnesses, fully qualified to present the message of the Lord to the people, and to that end we give them all the assistance that we can.

Q. These cards, of which one has been exhibited by you, bear nothing but the typewritten name there, in addition to your own signature. Is that right?

A. That is right.

Q. You mean to say you had to meet with some particular qualifications with the Society in New York before you got that card?

A. Yes; I had to give them assurance that I had consecrated to do the will of Almighty God and to follow in His footsteps.

Q. Don't they send them out to you with the books?

A. They send them out to the companies only for the company servants and zone servants to supply to men and women who have given assurance that they have consecrated themselves and have a desire to serve as a Christian in taking this information to the people.

Q. And either you or the company types in the name of the individual who wants one of those cards?

A. That is right.

Q. And then you sign your own name at the bottom of it?

A. We do that so we can be identified to the police departments, if they request that credential.

(Card just referred to marked Plaintiffs' Exhibit No. 38)

Q. Now, of what does a company consist, Mr. Hessler?

A. Well, it can consist of two or three Christian men and

women. The Lord says, "Where two or three are gathered together in My name, I will admit and place them." And it can consist up to two hundred; and if it gets over two hundred it is recommended that it be divided, so they can carry on the work more efficient.

Q So that at any time you have two or three people, that constitutes a company?

A Well, not necessarily; we don't have any companies that small. We do have in Westmoreland County around ten or thirteen; we started them at five. And then they grow.

Q And is there some way that they are officially designated as a company?

A Yes, they—some individual of that group—

Q Makes application?

A (Continuing)—makes application that they would like to organize as a group or company of Jehovah's witnesses.

Q And once they are organized into a company, then they get credit with the Watchtower Bible and Tract Society and may obtain literature?

A Yes.

Q And may obtain it for a particular price, or a particular contribution?

A Yes.

Q Whether it is paid or whether it is sent to them on consignment?

A Yes.

Q Now, you told the Court there was a company in Jeanette.

A At one time.

Q When was that company organized?

A I don't know when it was organized, but before I came to Pittsburgh.

Q When did you come to Pittsburgh?

A 1936.

Q And when was that company dissolved?

A Well, it was consolidated with the Pittsburgh company.

It was consolidated with the Pittsburgh company about 1936 or '37, and then later when another subdivision of the Pittsburgh company was made those who resided there were put into the supervision of the Duquesne company, and the Duquesne company now functions.

Q So that, there has not been a company of any kind in Jeannette since 1936, or at the very latest 1937. Is that right?

A That is correct.

Q And that was at least two years before any of these arrests were made, that company was gone, as far as Jeannette is concerned?

A It was consolidated with the Pittsburgh company.

Q Tell me, who made up the company when you had one in Jeannette?

A Well, there was a man by the name of Caldwell.

Q Give me his full name.

A I forgot what his first name was.

Q Well, where did he live?

A He lived on Route 30.

Q Well, Route 30 is not in Jeannette, is it?

A Well, he was part of that group.

Q Who has the records showing this company?

A Well, I have the records in the office.

Q Where is the office?

A Over at 1807 Brighton Place.

Q In Pittsburgh?

A In Pittsburgh.

Q And who has charge of those records?

A Well now, I will have to qualify that, as far as—We have the names of those who were associated with that group, some of them; but just who would have charge of those records now, I don't know.

Q Well, who has charge of that office?

A Well, they would be under my supervision, any of those names of the former company. The Duquesne company now at the present time would have the names and ad-

dresses of those who would be interested that reside in Jeannette at the present time.

Q I want to know where the records are of any company that ever existed in Jeannette.

A Well, the original records of those companies, or of anyone ever interested in Jeannette, would be in the Brooklyn office. The Brooklyn office could give me that information.

Q Do they have the records?

A I presume they do; I couldn't say whether they do or not.

Q How do you know there ever was a company in Jeannette, if you don't know about these records?

A When I came down to Pittsburgh I was informed there used to be a group in Jeannette, and I went out and visited.

Q Now, you told me about the consolidation of the Jeannette company with the Duquesne company?

A That is right.

Q How do you know about that?

A I was informed that that company was made part of the Pittsburgh company.

Q Then you don't really know it at all, do you?

A Yes.

Q And you don't know there are any records in your office?

A Yes; I went out there and visited those people.

Q Does Jehovah's witnesses, or the Duquesne company, maintain a bank account of any kind in this community?

A I don't know—without looking at my records, I couldn't state whether the Duquesne company does or not. Some of them do and some don't. If they are large enough and have sufficient money to warrant a bank account, they keep a bank account. But some of the smaller companies don't; and whether the Duquesne company have or not, without looking at my records I can't tell.

Q Which is the company at 1807 Brighton Place?

A That is my permanent address.

Q Is that your business address?

A The Allegheny company have their address at 1807 Brighton Place.

Q That is your permanent business address?

A That is my permanent business address.

Q What records do you keep there?

A Well, I get my mail there.

Q Well, do you have any records of purchases and sales of literature?

A The Allegheny company would have.

Q Well, are you in charge of the Allegheny company?

A No; I just assist them, to see the work is done in an orderly way.

Q All right. Does the Watchtower Bible and Tract Society, of which you are the manager, maintain any records there?

A No, they don't maintain any records; but the Allegheny company themselves maintain records.

Q All right. Now, you told the Court a few minutes ago there were some records there, and that these records of these particular people in Jeannette ought to be there.

A No; I qualify that.

Q What records are there you were referring to?

A Just let me explain the answer. At the time the consolidation of the Jeannette company was made with the Pittsburgh company it was all one great big Pittsburgh company; today there are four or five units in Pittsburgh, they were separated. When I made the statement that the records of the former Jeannette company were at our office, we had our office at 907 Middle Street, and it was all one company; but since then the change has been made; and I desire to qualify that, because the Allegheny company does not have jurisdiction over the Jeannette territory. That is now covered by the company at Duquesne, and the names of the interested persons that reside in Jeannette would be held by the Du-

quesne company; they would have the records of the interested persons.

Q All right. Now, where is the office of the Duquesne company? That is what I want to know.

A 1108 Crawford Avenue, Duquesne.

Q And who has charge of the records?

A George Serenco—S-e-r-e-n-c-o.

Q And you have seen the records there. Is that right?

A I know that he has records there. I wouldn't state that I have seen the records concerning Jeannette, but I know their company has the records, yes.

Q How do you know he has the records?

A Well, I visit their company from time to time.

Q Well, have you seen them?

A I have seen the records, yes. That is his home, and when I have seen them they have been in the hall at Duquesne Library.

Q In where?

A The Duquesne Library—Carnegie Library in Duquesne.

Q And are they required to keep a record of all the names?

A They keep a record of all the persons who are interested, yes.

Q Well, do they keep a record of all the ordained ministers?

A Yes.

Q And all the companies that are formed?

A Yes.

Q Do they keep a record of the books that are purchased and sold?

A They keep a record of that, yes.

Q Now, when your group first came to Jeannette, in the latter part of March, you had several talks with the Mayor?

A Yes.

Q He undertook to get you to comply with the regulations there, told you what the ordinance was and what the requirements were?

A He informed me of the ordinance, yes.

Q And you told him you weren't going to comply with it?

A I didn't tell him in that manner. I called his attention to the fact that we appreciated they had a commercial ordinance but that ordinance did not apply to the work that was being done by Jehovah's witnesses.

Q You told him that?

A Yes; and I called attention—

Q And he, after all, was the mayor of the city?

A Yes; and I called his attention—in fact, gave him a copy of the Supreme Court decision in the Lovell case, showing that the Supreme Court had reached it did not apply to this work.

Q And you did tell the Mayor, after he had arrested a few persons and after appeals had been taken and were then pending in the Quarter Sessions Court of Westmoreland County—you did tell the Mayor you were going to bring a crowd in there that his police force couldn't possibly cope with, didn't you?

A No, I didn't tell him that.

Q Well, as a matter of fact, didn't you on the following Sunday come into town with a force of between one and two hundred people?

A I think, if you will check the names on that list, there were probably a little over a hundred.

Q As a matter of fact, weren't there over two hundred?

A No.

Q You did set up headquarters just at the edge of town, didn't you?

A Right outside the city limits.

Q There were many automobiles in that group, weren't there?

A About twenty-five.

Q And you used a parking lot in the vicinity of Oakford Park?

Q And you then set up headquarters nearby, didn't you?

A I was there.

Q Well, did you set up headquarters nearby?

A Well, you could call it headquarters.

Q Did you rent a room?

A No.

Q Did you have the use of a telephone?

A A public telephone at a gas station.

Q You did use that headquarters, and the people who were in the group were supposed to call you there. Is that right?

A If they had any interference.

Q If they had any interference. And they did call you; they had interference?

A Yes.

Q And you went there expecting it, didn't you?

A Well, we expected it, from what Mayor O'Connell said.

Q He told you they were going to enforce the ordinance?

A He told me they were going to enforce the ordinance.

Q And as the result of that day's activities some twenty-one were arrested. Is that right?

A Yes.

Q And you gave bond for all of them?

A Yes.

Q And you were in charge there. You didn't go out and watch these people, what they were doing from door to door?

A I knew the method of work they were doing.

Q But you didn't see what they were doing, did you?

A Every individual, no.

Q And you attended the hearing the following day?

A Yes.

Q And as a result of the testimony that was offered there, there were some seventeen, I believe, of them—

A Eighteen.

Q (Continuing)—eighteen convicted; and after they were convicted you again posted bond and a petition for allowance of an appeal?

A That is right.

Q And you refused, in connection with that appeal, to have attached to the appeal a transcript of the record in the Mayor's court, did you not?

A No, we didn't refuse. In fact,—

Q Well, you didn't do it?

A Well, that was an error on the part of the attorney that we had at that time.

Q When that matter came before the Quarter Sessions Court, the City objected because you had not attached a copy of the ordinance and had not attached a copy of the transcript. Was that not a fact?

A Well, that was an error on the part of the attorney, because he was following a practice and not according to rule of law.

Q You were present when that case was argued, weren't you, Mr. Hessler?

A Yes.

Q And you knew we objected at that time because you had refused and failed—

A No, no objection was made at that time, at the time of the appeal—there was no objection made at the time of the petition for appeal, because we still had time—If that had been the sole objection, we still had time to request the Mayor to furnish a transcript of the case, and attach it to the orders.

Q But your appeal was refused?

A That excuse wasn't used until the matter went before the Superior Court.

Q And you then petitioned for a reargument, didn't you? Is that right—that appeal was refused?

A Yes.

Q And you petitioned for a reargument before the Court of Quarter Sessions?

A Yes; on the basis we—

Q And you still did not attach a copy of the ordinance or a copy of the transcript?

A We tried on several occasions to get a copy of the tran-

script from the Mayor at a later date, and were refused.

Q You wanted to get before the Court your own version of facts, and you didn't want the version of the facts as they appeared before the Mayor?

A No; that has not been our custom. In all cases we have only been too anxious to lay our case on the table, so that the Court can get a clear conception of just the method that we use and what we were doing and how we were doing it at the time; but in that particular—

Q You then went to the Superior Court?

A Just a moment. Let me clear it up.—

The Court (to witness): Oh, we can't go into too much argument. You are here for cross examination, and you are supposed to answer his questions.

Q You did go to the Superior Court?

A Yes.

Q And you did not attach a copy of the transcript there, did you?

A Well, I didn't prepare the petition for appeal, and I couldn't say whether it was attached or not.

Q And so it was not until you got into the Supreme Court of the United States with an application that you did finally insert in the record a transcript of the proceedings in the Mayor's Court?

A That is right.

Q And a transcript of the ordinance?

A That is right.

Q I show you the Defendants' Exhibit "A", we will call this—I have only my bound volume of the record in this case, if the Court please—

The Court: Of course, if it is not certified, I don't know—we cannot admit it, unless counsel examine it and look it over and agree to it.

Mr. Covington: We have no objection to your introducing the entire thing.

Mr. Trescher: We would like to introduce the entire thing.

Mr. Covington: Well, we are willing for you to introduce the whole thing.

The Court: I am afraid you will encumber the record, if you ever need a record. We will allow you to read into the record anything that may be material to this inquiry, but we don't want you to introduce a book of that size.

Mr. Trescher: If the Court please, I quite agree it ought not to be written into the record, and I don't know that we need to go into all phases of it. But the thing the Court is concerned with here, if there is anything material there, whether there has been any infringement or any violation of civil rights, of course the very best evidence of that is the record itself. And while I don't think it needs to be introduced or written into this particular record, it is about the most compact way we can present it to the Court. I feel that the other side ought to be confined to the record, if they are going to charge a violation of civil rights.

The Court: By that particular record? I don't understand the position of the complainants here to base it upon that, but upon the threats to enforce the ordinance and that the ordinance itself is really the object of attack.

Mr. Trescher: Well, if that is the purpose, it seems to me, the Supreme Court has passed upon the ordinance, it has been passed on by the Superior Court of Pennsylvania—

The Court: Well, you can read that into the record; but to go up on appeal and have to put the whole thing in would be too bad.

Mr. Trescher: I quite agree with you. And, of course, I am referring only to the record in the Supreme Court. (Said bound book marked Defendants' Exhibit "A")

The Court: And let it be known that you are referring only to certain parts.

Mr. Trescher: In referring to Exhibit "A" we are

referring only to transcript of the record in the Supreme Court of the United States at No. 722 October Term, 1939, and the petition for writ of certiorari at the same number and term; the reply of the City of Jeannette to the petition for writ of certiorari in the same case; the motion for writ of certiorari to correct diminution of record, in the same case; and the reply of the respondent City of Jeannette to the motion for a writ of certiorari to correct diminution of record, in the same case.

Mr. Covington: Are you going to offer all that to have it ultimately typed into the record, counsel?

Mr. Trescher: No, I haven't offered it at all yet; I just asked the witness.

Mr. Covington: I don't know whether he knows anything about those or not. He didn't handle the case; he is not a lawyer. I mean, you and I can get together—we know the record ourselves, inasmuch as we handled it together as attorneys. If you will just tell me what you want to introduce of that, I might be able to agree to it, without wasting all the time wrangling with the witness.

Mr. Trescher: What I want to ask him about particularly at the present time is the statement of facts which he presented to me, and which he presented to the Mayor, and which he requested the Mayor and I sign, in connection with that appeal to the United States Supreme Court; and I should like to ask him whether he has a copy of that.

Mr. Covington: Well, I don't know whether he has a copy, but we will agree you can use that; it is printed in there.

Q You did, after that appeal was taken and before the record was made up, present a statement which you called an "Agreed Statement of Facts", didn't you, and ask us to consent to it?

A. I believe so.

Q And in that you asked us to certify to the Court that all

of the defendants had testified, didn't you?

A Just what was in that statement I wouldn't be able to say yes or no until I read it.

Q Wasn't that one of the things you wanted us to agree to?

A Well, I just said I would have to read it before I could say yes or no to what is in it, now. My mind is a little hazy now, just what was in it?

Q Do you remember any of the other things that might have been in that "Agreed Statement of Facts"? Did you want the Mayor to certify a record had been played when it actually hadn't?

A On that particular time, I don't know just what we had in that record.

Q You don't recall that at all?

A But we wanted the Mayor to agree to the method of work that was being used by Jehovah's witnesses in Jeannette at that particular time, present all the facts to the Court.

Q In other words, in presenting this case to the Supreme Court, you wanted us to agree to some things that had not been done at all, didn't you?

A No. We wanted to give the Court the complete picture of the method employed by Jehovah's witnesses, so that they could see whether or not it came under that ordinance.

Q But you wanted us to agree to a lot of things that had not actually been done at all, didn't you?

A Well, I don't actually recall just what was in that letter.

Q You don't recall?

A We wanted the Mayor and counsel to agree to give the higher court a complete picture of what method we were using.

Q At any rate, after that case was returned I believe these people voluntarily—well, they at first refused to pay their fines, and then voluntarily submitted themselves to jail. Is that correct?

A They submitted themselves to jail.

Q And then made an application for a writ of habeas corpus, and that was refused by the Court, and there is now, in connection with that Commonwealth vs. Stewart, and associated cases, resulting from the arrests in April of 1939, an appeal pending in the Superior Court of Pennsylvania?

A Yes.

Q From the refusal of a writ of habeas corpus in connection with the persons who had voluntarily submitted themselves to jail after refusing to comply with the order. Is that correct?

A That is right.

Q Now then, you have spoken of a number of arrests that occurred I believe in February of 1940. There was a complete stenographic record made up of all the testimony that was offered in that case, wasn't there, and the persons who were convicted filed appeals there?

A That is right.

Q And you, in charge of those particular appeals, requested that the decision of the cases resulting from the February, 1940, arrests be held up until the Superior Court had had an opportunity to again pass on the questions raised at the habeas corpus hearing arising out of the arrest of the people in 1939, did you not?

A Well, there wasn't a habeas corpus at that time.

Q I know; but you were taking an appeal on the habeas corpus, and on these 1940 arrests you asked that those cases be held up and not disposed of by the Quarter Sessions of Westmoreland County until the Superior Court had passed on the appeals which had been taken to the Superior Court again arising out of the 1939 arrests?

A Yes, but at that time the appeal on habeas corpus had not been applied for; but we did not ask the Court at the time of those arrests in February, 1940, we asked Mayor O'Connell.

Q To withhold that decision?

A To withhold decision until such time as the outcome of this other case.

Q And you asked the Quarter Sessions Court to withhold its decision, and that decision is being withheld as the result of your own request, is it not?

A I believe the counsel made that request.

Q By the counsel; and you, in charge of the defense, asked him to make it?

A That is right.

(Paper marked Defendants' Exhibit "B")

Q I show you Defendants' Exhibit "B", and ask you whether you have seen that pamphlet?

A Yes, I have.

Q Was that printed by the Watchtower Bible and Tract Society?

A Well now, right—to tell you the truth, I don't know whether it was printed by them or whether it was printed here locally.

Q Who caused it to be printed?

Mr. Covington: We are the ones that signed it.

A The defendants in that particular case are the ones that requested it be signed.

Q Well, who printed it?

A Just where it was printed I couldn't say.

Q Did you have anything to do with its printing?

A Well, I saw it after it was printed.

Q Where did you see it?

A When it was being distributed—before it was being distributed.

Q Did you direct the distributing of it?

A I assisted in it, yes.

Q And at whose request did you direct the distribution of it?

A Of the defendants.

Q Of the defendants?

A On behalf—it was distributed on behalf of them and others of Jehovah's witnesses in Western Pennsylvania.

Q Who paid for that?

A Jehovah's witnesses.

Q Out of what fund?

A Well, any expense attached to it, voluntary contribution; and the actual printing of this I don't just recall, as I say, I don't know where it was printed.

Q Might it have been printed in New York

A It might have been, yes.

Q Might it have been printed in Pittsburgh?

A Yes.

Q You directed the printing of that, didn't you, Mr. Hessler?

A No, I couldn't say I directed the printing of it, but I knew it was going to be distributed, and assisted in the distribution of it.

Q How did you know it was going to be distributed?

A Because Jehovah's witnesses who had been incarcerated thought a great injustice had been done not only to themselves, but to others of good-will, as well as all Jehovah's witnesses, and they wanted to lay the facts of the injustice before the people of Westmoreland County.

Q And you undertake to tell the Court you don't know who printed that?

A Yes, I am frankly telling you at this moment I don't recall whether this printing was done in Brooklyn or whether it was done in Pittsburgh here, because there was done printing of this nature in both places.

Q Do you know who wrote up the things that are stated in that—

A No, I don't know that; frankly, I don't know who wrote this statement.

Q Do you know how it got to Pittsburgh?

A Well, if I knew where it was printed, I could answer that question.

Q Would your company have a record of who printed that?

A I don't know; I don't think so.

Q Of what companies are these individuals members—

A They are scattered all over; in Pittsburgh and—they are scattered all over.

Q Who paid the legal expense in connection with the cases out of which that piece of literature—

A Jehovah's witnesses. Jehovah's witnesses contributed towards the expense.

Q Is that the seventeen hundred dollars you spoke of?

A Yes; they contributed, or paid for all of it.

Q And then the Watchtower Bible and Tract Society didn't pay for it at all; it was these individuals that paid for it?

A Well, individual Jehovah's witnesses. Any money that the Watchtower Bible and Tract Society paid Jehovah's witnesses would remunerate them.

Q Well, listen,—you don't just make an expenditure of seventeen hundred dollars without making some record of it, do you?

A No, certainly not.

Q What account did you pay it out of?

A Out of the Kingdom Service Association.

Q Where is the Kingdom Service Association account?

A In Pittsburgh.

Q In what bank?

A The Mellon.

Q And who draws checks on the Kingdom Service Company's account?

A Mr. Stewart and Mr. McKnight and myself.

Q And yourself. You do then draw checks?

A No: I have the power to sign checks when necessary, in addition to another signature; two signatures are required on all checks.

Q And where does the money come from in that Kingdom Service Company account?

A From Jehovah's witnesses.

Q You mean from individuals who make contributions?

A Yes. Members of the Kingdom Service Association,

they contribute the money to help carry these cases to court. Any individual or any one group of Jehovah's witnesses, the burden would be too great. They recognize that. And in order that this message of the Kingdom may be taken to the people, regardless of any opposition that may occur, or any arrests, Jehovah's witnesses have organized and chartered the Kingdom Service Association in order to assist them in meeting these expenses.

Q Where is the check book of this Kingdom Service Company?

A In the custody of Mr. Stewart, the treasurer.

Q And Mr. Stewart is the man that carried one of these appeals into the Supreme Court of the United States?

A That is right.

Q And the expenses were paid out of that account?

A That is right.

Q And he was one of the persons authorized to write checks out on that account?

A Not at that time; at that time Mr. Chambers was the one authorized to write checks, but he is dead now.

Q Now then, can you tell us whether the cost of printing this particular piece of literature, Exhibit "B", might have been paid out of this account?

A Out of that? I would tell you if I could, if I knew where it was printed. At this moment, if I knew whether it was printed at Brooklyn or not, I could tell you that.

Q Well, do you have any records to show where such literature comes from?

A No, I don't know whether we have a record of that or not. I would be glad to tell you if I had, because the Kingdom Service Association and Jehovah's witnesses heartily endorsed its distribution, and if I knew the details of where that was printed, and who paid for it, I would gladly do so, but I don't.

Mr. Trescher: I would like at this time to ask that the accounts of the Kingdom Service Association be

brought into court at the session this afternoon.

Mr. Covington: They are third parties here. How can you ask parties other than parties to the suit to produce records?

Mr. Trescher: They are involved and a very important part of Jehovah's witnesses. In your own testimony it appears some seventeen hundred dollars was paid out, and it now appears it was paid out of this account; and, according to your theory of the case, it is an important matter, and I think the records ought to be brought into court rather than put the loose—

The Court: Well, we don't know that counsel has control over that. You can issue a subpoena duces tecum at noon time, if you want to.

Mr. Covington: What part of the records do you want? We don't want to bring into court all the records of a corporation.

Mr. Trescher: We want the records showing receipts and expenditures from this account of Kingdom Service Company.

Mr. Covington: In regard to this case?

Mr. Trescher: Particularly with regard to the seventeen hundred dollars which the witness says was paid out of that account, and with regard to other sums which were paid out during that period.

Mr. Covington: All right; we will be glad to bring them in.

Q Would it be possible, Mr. Hessler, to get the records from the Duquesne office showing this Jeannette company which you say at one time existed?

A The record of the Jeannette company from the Duquesne company?

Q Yes.

A We will be glad to find out what information they have relative to the interested persons that reside in Jeannette, but I don't—

Q Can you get those records in here?

A The Duquesne company I don't believe have any record of the former Jeannette company, but they do have the record of people who are interested.

Q Then it comes down to it, you don't really know whether there ever was a company in Jeannette?

A Yes, only from being informed of the fact.

Q There isn't any record of any kind of it?

A I haven't any in my possession right now.

Q The mayor on all these occasions—and I refer to Mayor O'Connell—told you that you could distribute things free in the city of Jeannette, either on the streets or homes, any time you wanted to, didn't he?

A Yes; on several occasions.

Q On numerous occasions he told you that?

A Well, not numerous; several.

Q And he told you you would be at perfect liberty to do that?

A And I told him at that time that sometimes we did make distributions free, but the general purpose of the Jehovah's witnesses was to give the people the message and give them an opportunity to make contributions, if they desired.

Q He told you he didn't want you molesting the people who didn't want your people in their homes, didn't he?

A We told him that.

Q And you told him—you insisted upon the right to enter their homes during the hours of religious worship, did you not?

A No, we never did that. We never had any desire to enter any home uninvited.

Q Well, you did come to Jeannette on at least a couple of occasions and insisted upon coming during the hours of religious worship, did you not?

A Well, there is no restriction upon the time a person can visit Jeannette.

Q But you insisted upon coming during the hours of ordinary religious worship, did you not?

A Well, we came to Jeannette on Sunday morning, because that was the most appropriate time to find people at home.

Q And you know from your actual experience of being at the police station that the police were just polluted with calls, as the result of annoyances on the part of your people, don't you?

A They had a few calls there.

Q They were kept busy the whole period that you were in town, were they not?

A They had a few calls from prejudiced people, but that was not representative of the people of good-will of Jeannette. There is lots of people in Jeannette of good-will, who would like to have Jehovah's witnesses call at their homes.

REDIRECT EXAMINATION

Mr. Covington:

Q Mr. Hessler, explain why a place like Jeannette is worked by a group of Jehovah's witnesses. How often is it done?

A Well, Jehovah's witnesses put forth an effort to visit the homes of all the people in this community, or any community, three or four times a year, and in communities like Jeannette, where they have—some distance from the home company, and where they have encountered police interference, it is advisable to visit that community in a large group, in order to cover the town quickly and at the same time give everybody in the community an opportunity to receive this information.

Q Now, you say there is no company in Jeannette at this time. In cities where there is no company, of that size, what is the ordinary method of working it?

A It is visited by Jehovah's witnesses from other companies, and from time to time we hold a little convention, Jehovah's witnesses—we hold what we call a zone assembly twice a year, and they come from within a

radius of fifty or sixty miles of Pittsburgh, and then they visit the communities within a radius of twenty-five, thirty miles from the assembly; and they do it in groups of ten, fifteen, twenty-five cars, depending upon the size of the community.

Q. And Jeannette is within that area. Is that correct?

A. Yes.

Q. And it is worked that way three or four times a year?

A. Yes; we try to work it three or four times a year.

Q. Now, this action is brought for the benefit of all of Jehovah's witnesses. You are suing for others, too; are you not?

A. It is brought on behalf of Jehovah's witnesses and on the part of people of good-will who reside in these communities.

Q. Who are the people that like to receive Jehovah's witnesses?

A. Yes.

Q. And those are the ones you are seeking to warn?

A. Not only seeking, but the message we have for them is of vital importance they receive it, in order that they receive life.

Q. And about how many Jehovah's witnesses are there that are affected by this suit and the action of the defendants?

A. Well, surely there would be in the vicinity of Pittsburgh here around seven, eight hundred; in the zone around fifteen hundred.

Q. And certain numbers of those individuals from time to time throughout the year go to Jeannette and similar places. Is that correct?

A. Yes.

Q. Now, you were cross-examined by Mr. Trescher relative to the amount that you are allowed on the books, the large bound books there. You get those from the Society on a contribution of five cents. Is that correct?

A. Yes.

Q Now, you are a full-time worker. Is that correct?

A Yes.

Q Now, pioneers and all other full-time workers, how do they get the books?

A They get the books for five cents.

Q On the same basis?

A On the same basis.

Q And the company workers are what type workers—part-time workers?

A Yes.

Q And they have secular employment?

A Yes.

Q And work after hours or on Sundays?

A Yes.

Q And they get their literature not direct from the Society, but from the local company. Is that correct?

A Yes.

Q And a local company gets it from the Society?

A Right.

Q Now, what rate does the local company get the bound book for, the large bound book?

A The company gets the large book from the Society for twenty cents.

Q And the individual members of the local company get the book from the company for the same price?

A For the same price.

Q And are they all required to place the books at the designated, set figures?

A Not more than contribution of twenty-five cents, but if they want to give them away that is their own matter.

Q And they contribute to the company twenty cents, which is in turn returned to Brooklyn. Now, explain the reason why a full-time worker gets them for five where as a company worker gets them for twenty?

A Well, it is recognized that a full-time worker in most cases has expenses, the same as anyone else, but inasmuch as this work is of vital importance that the people

throughout the earth receive it, and many of them are without employment, full-time workers not only use that money for living expenses but they also use it to enable them to give books away—booklets away free from time to time.

Q Now, the work that is from time to time carried on in communities like Jeannette on the streets—is that true—the magazines are distributed?

A Yes.

Q Why is the work done on the streets, instead of being confined to house work, house to house?

A Very often, when the home is visited, there is no one there, and in order not to miss anyone, Jehovah's witnesses, from time to time devote time, on the street corners exhibiting "Consolation" and the "Watchtower" magazines to them, to give all those people who wish to do so an opportunity to receive the same.

Q Now, just for the purpose of the record, demonstrate and show how that work is carried on on the streets.

(Placard marked Plaintiffs' Exhibit No. 39).

Mr. Trescher: There is no charge in your complaint about this particular piece of literature.

Mr. Covington: This is as to "The Watchtower"—you say there is no allegation with respect to "The Watchtower"? Look at page 4, describing the "Watchtower" and "Consolation" magazines, at the top of the page.

Mr. Trescher: You just tell what it is.

Mr. Covington: That it is part of the literature distributed, and that it is distributed from house to house and upon the streets. Now, we allege that that is the way it is done, and that you threaten to enforce this ordinance if it is done in that manner.

Q (Continuing) Now, would you kindly explain how this work is carried on on the streets? How are the Witnesses equipped?

A They all carry a bag similar to this (producing bag), with their literature in it, and they take their position

up near the curb. As a person approaches, they hold that sign (Exhibit 39) up so they can read it (witness demonstrating), "Religion is a Snare! The Bible Tells you Why. Read the Watchtower, 5 Cents".

Q Is that the slogan that appears on the sign?

A That is on one of the signs. And then they walk down, and if somebody else goes by they repeat it. And if they are interested, they may have the opportunity to secure it; if they are interested and do not have the five cents, and would like it free, they get a copy free, and they are told that someone will call at their home and ask if they read it and like it. And maybe down the street at another block—

Q You are referring now, are you not, to Plaintiffs' Exhibit 39? That is the thing that is used?

A Yes.

Q Now, the bag you have strapped over your shoulder now, what is usually in that bag?

A "Watchtower" and "Consolation" magazines.

Q Are other street workers equipped with similar signs?

Q A That is right, similar.

Q Such as "Religion Injures! Christianity Blesses You". And with that "The Watchtower" is presented for five cents a copy. Is that right?

A Yes.

Q And "Abandon Religion! Serve God and Christianity" is another sign; "Seek Righteousness and Live!" is another sign or slogan; "Righteousness Exalts a Nation! Christianity is Righteous!" is another slogan; "Religion is Ruining the Nations! Christianity Will Save the People!"; "Religion Works Evil! Christianity Brings Good!" Those are the various slogans used by the individuals in the street work, in the manner that you have demonstrated?

A Yes.

(Bag used by witness in demonstration marked Plaintiffs' Exhibit No. 40)

Q On the one sign is "The Watchtower Explains the Theocratic Government, 5 cents per copy", and on the other side "The Watchtower and Consolation, 5 cents per copy". Is that the sign on the opposite sides of the bag?

A That is correct.

Q If a person is financially unable to obtain that particular piece of literature then being offered, is it given to him freely, if he is interested?

A That is right; if he is interested, they will be glad to give it to him free.

Mr. Trescher: As I recall the testimony, he didn't say at any point—

Mr. Trescher:

Q Let me ask you: You did not undertake at any point to say that you had been in any manner interfered with in the distribution of this magazine, or the "Watchtower" magazine?

A I wasn't asked that question.

Q You were not asked that question. I just wanted to make sure that I hadn't overlooked that. That is quite all right.

A I did not testify to that fact.

Q I do want to ask you one more question: The records of the—what was the name of the company you spoke about a while ago?

A Kingdom Service Association.

Q Does that association keep a record of all its receipts and expenditures?

A Yes.

Mr. Trescher: Very well. I will ask that that record as well be brought in this afternoon.

Mr. Covington: Now, if the counsel would just kindly give us a reason why he wants us to bring that. I mean, we can get it, but there is no use cluttering up the record with all the books and activities—

The Court: In my own way, I think it is rather obvious. Here is an ordinance directed in connection with

monetary sales, and so forth, and the monetary feature enters into it. It is your attitude here that that is in no way connected with this particular matter. Now, it is of course relevant to show the contrary.

Mr. Covington: Now, we could cause to be brought, of course, those records. That Kingdom Service Association is not operated—is not the Duquesne Company or the Pittsburgh company of Jehovah's witnesses, it is entirely separate, used by Jehovah's witnesses for the purpose of paying out money to defend these cases that have been brought down here and maintain a Kingdom School for the children.

Mr. Trescher: That is just one of the troubles, we have too many corporations, and too many associations, and too many companies, and too many individuals.

The Court: He wants to follow through along that particular line, of course,—

Mr. Covington: All right, we will bring it; we will bring the records.

(Recess taken until 1:30 o'clock P.M.)

AFTERNOON SESSION

CHARLES R. HESSLER resumes the stand.

CROSS EXAMINATION (resumes)

Mr. Trescher:

Q Of what do the records of the Kingdom Service Company consist?

A Why, it shows the money that was received to help defray the expenses—

Q You didn't understand my question. I say, of what do the records consist? What are the books?

A Well, it consists of the amount of money received, the amount of money expended, and the number of who are

members.

Q Do you keep a day book?

A We have a set of books, yes.

Q And of what does that set consist?

A It keeps a record of the money received and of the money expended.

Q Well, is there a day book and a ledger, or what?

A A ledger, yes.

Q Only a ledger?

A And a daily record, or a weekly record, of money received.

Q Does that show all receipts and expenditures, from whatever source?

A Yes.

Q Do you have a cash book as well?

A I have a—yes.

Q Do you have a bank deposit book?

A Yes.

Q And is the only account of the company in the Mellon Bank?

A It is in the Mellon Bank, yes.

Q Is that the only account? Does it have any other bank accounts?

A In the First National Bank, I believe.

The Court:

Q Instead of the Mellon, or an additional one?

A Well, I will have to make—I can't answer that just now.

Mr. Trescher:

Q Well, you write checks, don't you?

A I sign checks for the bookkeeper, or the cashier, or secretary.

Q Who is the cashier of that company?

A Mr. Stewart; he is the secretary and treasurer.

Q Mr. Stewart was in court this morning?

A Yes, I believe at the present time the Kingdom Service

Association funds are in the First National Bank. Now, I would like to qualify that later.

Q Do any of your affiliated or associated companies have an account in the Mellon Bank?

A Yes, they do.

Q What one?

A Well, I believe the Allegheny company does.

Q What is the address of the Kingdom Service Company?

A Well, at the present time it is the Wabash Building.

Q What room?

A Mezzanine floor.

Q Records kept there?

A Well, some of them are kept there, and Mr. Stewart, secretary and treasurer, keeps some at his home.

Q Where is his home?

A 317 Grace Street.

Q That is, Pittsburgh?

A Yes, that is right.

Q Who are the other officers of that company?

A Well, Mr. McKnight.

Q What is his first name?

A Thomas McKnight.

Q What is his official capacity?

A Vice president.

Q And who is the president?

A I am.

Q And your first name, Mr. Hessler, is what?

A C. R.—Charles R.

Q And is that company incorporated under the laws of Pennsylvania?

A They have a certificate of authority under the laws of Pennsylvania, and incorporated in the State of Delaware.

Q Is all of the business of Jehovah's witnesses in this particular zone, the zone of which you are the head, transacted through that corporation?

A No, it is not. The only expense—

Q What other corporation do you use?

A That is the only one we use. The various companies of Jehovah's witnesses are not incorporated, but in order to assist Jehovah's witnesses in this entire area to meet the expenses of these various court cases where that work has been interfered with, we had to have some orderly arrangement of meeting that expense; and, in addition to that, the Kingdom Service Association was organized to operate Kingdom schools where little children were expelled from the public schools, and to prevent their parents from being incarcerated for failure to send them to school, a school is provided and operated, and Kingdom Service Association is incorporated for that purpose, and that is the sole purpose of the corporation.

Q Now, when companies purchase books—

A The Kingdom Service Association has nothing to do with that.

Q That is handled direct between the company and—

A And Watchtower.

Q (Continuing)—and the New York office, or the Brooklyn office. Is that right?

A That is right.

Q And from what source does Kingdom Service derive its income?

A The only income they have at all is from voluntary contributions on the part of members. The members contribute a dollar a year membership, and that money is used to help for maintenance expenses and school property, and any other money that is received comes from voluntary contributions on the part of members.

Q Now, when we were in court this morning, I believe counsel stated that the records of the Kingdom Service Company would be produced this afternoon—

Mr. Covington: Counsel did not say that; counsel said he would try to get them here.

Q Well, have you produced them, Mr. Hessler?

A No; we were unable to get in touch with Mr. Stewart; he was out of the office when we got out.

Q Just a minute. Mr. Stewart was in court here this morning.

Mr. Covington: He was not.

Q Do you mean to say I didn't see Mr. Stewart here in court this morning?

Mr. Covington: I did not.

Mr. Trescher: I would like to ask that the witness be directed to give the answers.

Mr. Covington: Well, the witness doesn't know.

The Court: How do you know whom he saw?

Mr. Covington: I know he wasn't here. That is how I came to say that; I know he wasn't here.

The Court: Well, let me suggest to both counsel that you be just a little bit more orderly in your procedure. Make your objections to the Court.

Mr. Covington: We object to that line of interrogation, about whether or not Mr. Counsel saw the witness Stewart; that is entirely improper.

The Court: Well, he asked him whether he wants to say he did not, and he can say whether he did or did not.

Q Was Mr. Stewart in court?

A Not to my knowledge; I didn't see him. Not to my knowledge.

Q What efforts did you make to see Mr. Stewart?

A I had his wife, I tried to get him on the telephone.

Q Is there anyone else in the office at the Wabash Building?

A He is not—Mr. Stewart works at secular work, and he is at his office, or was at his office this morning and was unable to be here.

Q Is anyone at the office of the Kingdom Service Company at the Wabash Building?

A No.

Q No one in charge down there?

A Not during the day time.

Q Well, is there anyone here in court that has access to those records?

A No.

Q You, as president of the company, do not have access to them?

A I don't have them either.

Q You mean, you can't get the records?

A I couldn't possibly get them, if I wanted. Mr. Stewart—

Q You don't even have a key to the office?

A No; Mr. Stewart handles that part of the work,

Q And how about Mr. McKnight?

A He doesn't have access to those records, either.

Q No one but Mr. Stewart?

A That is all. The only thing Mr. McKnight and I do is to countersign the checks. All checks issued by Mr. Stewart must be countersigned by either Mr. McKnight or myself.

Mr. Covington: Just a moment, counsel. I want to say this, Your Honor, for the benefit of the Court: we will have all the records that counsel desires here when the court next convenes after the 2:30 recess. That line of interrogation can be avoided, and give ample time when the court meets again, and all those records that counsel desires will be here.

Mr. Trescher: It seems to me, if the Court please, it might save the time of the court if we were given an opportunity to inspect these records in the meantime.

The Court: Well, when they are brought in, we will give you a reasonable opportunity. Of course, we cannot give you a lengthy one.

Mr. Trescher: I realize that.

The Court: They are not here now, though, so we have to proceed on that basis.

Q And the Allegheny company has its office in the Wabash Building too?

A No; it has its office at 1807 Brighton Place.

Q And who has charge of that company?

A Well, Mr. Petty, company servant—Mr. Joseph Petty is company servant at that unit.

Q Mr. Petty. And what is his first name?

A Joseph.

Q Is he at that address at all times?

A No, he is not; he is only there several times a week.

A. R. GUNDECKER, a witness produced on behalf of the plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Covington:

Q State your full name?

A A. R. Gundecker.

Q Where do you live?

A 812 Island Avenue; McKees Rocks.

Q In what county?

A Allegheny County.

Q And what is your occupation?

A My occupation is an ordained minister.

Q Do you have any secular work that you do?

A I do.

Q What is your secular work?

A Credit manager.

Q And for what concern?

A DeRoy's, Joseph DeRoy's, 311 Smithfield Street.

Q Is that here in Pittsburgh?

A Yes, it is.

Q Now, how long have you lived in the city of Pittsburgh?

A My entire life.

Q And how long have you been here in Allegheny County?

A My entire life.

Q Did you go to school here?

A I did go to school here.

Q Now, are you one of Jehovah's witnesses?

A I am.

Q And how long have you been one of Jehovah's witnesses, Mr. Gundecker?

A Since 1926.

Q Is your wife one of Jehovah's witnesses?

A She is.

Q What company or unit of Jehovah's witnesses are you connected with?

A The West End Unit of the Pittsburgh Company.

Q The West End Unit of the Pittsburgh Company. Now where does that unit meet or have its headquarters?

A Odd Fellows Hall in West End; I believe it is on Wabash Avenue.

Q How long have you been connected with the Pittsburgh company?

A Since 1926.

Q You are an ordained minister of the gospel, as you have testified. Do you possess credentials similar to those that were introduced in evidence this morning here, that shows that you are—that each one—do you have such credentials?

A Right with me (producing card).

Q And that is the same—or rather, the identification is the same as this Exhibit No. 38. Now, your method of worshipping Almighty God is how?

A I worship Almighty God by obeying His commandments, by going forth telling people of God's kingdom that is now being established on earth. As it is stated in the Scriptures that this gospel of the Kingdom must be preached in all the world as a witness, it is necessary for me to obey the instructions of God, because that is also stated in the Scriptures. It states that the soul that does not obey that prophet will be destroyed from among the people, and it says necessity is laid upon me that I preach the gospel.

A And you heard the testimony of Mr. Hessler as to the

way in which this gospel of the Kingdom message is preached, did you not, by door-to-door distribution of literature?

A Yes, sir.

Q And street distribution. You believe that as your way of distribution, or rather, preaching the gospel?

A That is right; because the Scriptures also state that Paul went from house to house and taught publicly.

Q And you were in the city of Jeannette on or about April 2, 1939, were you?

A I was.

Q And what were you in the city of Jeannette for?

A I was in the city of Jeannette to bring this comforting message of God's kingdom to the people.

Q And were you arrested at any time that day?

A Yes, I was arrested.

Q Before you were arrested, what if anything were you doing?

A I was in the town witnessing to the people of God's coming kingdom, distributing books to them.

Q And when you say "witnessing", how do you do that?

A I call upon the people, present my identification card, and explain to them that God's kingdom is being established, that we have books in our possession showing from the Scriptures that God is establishing that kingdom for all mankind. We then give these books to the people, if they so desire, and we ask in some cases a contribution. But that morning I did not ask for any contribution.

Q You did not. Did you have with you on that occasion any literature, booklets? I show you here booklets "Fascism and Freedom", and book "Face the Facts". Is that the two booklets you had with you that morning?

A That is the two books.

Q Now, as you approached the people you offered those to them. Is that right?

A I did.

Q Did you manage to receive any contribution that day?

A I did not.

Q How long had you been engaged in that work before you were apprehended by the officer?

A We were working in another part of the town and had completed that part. One of the brethren was working on one street, and I was undecided as to where I should begin to work, so that I and two sisters that were with me stopped on a street corner, and we were just talking the matter over when a car came up—in fact, it was Mr. Douglas was in the car with an officer. The officer stopped right in front of where we were talking, at the corner—

Q That is, one of the police officers of the City of Jeanette?

A Yes.

Q Go ahead.

A The officer approached the three of us and asked if we were soliciting. I told him we were not soliciting, we were preaching the gospel, and I immediately handed my testimony card to him. And I gave him a booklet that we had on the Supreme Court decision showing we had a right to do this work. He glanced at this and handed it back to me, and said that the mayor wanted to see me about it. I told him this work was very important, and that I couldn't go along unless I was under arrest. He said I am not under arrest. So I said, "I will immediately have to start to work," and the officer then told me to go ahead and do what I was doing.

Q The officer told you to go ahead and do what you were doing?

A Yes.

Q What did you do after he told you that—

Mr. Trescher: If the Court please, I don't know whether we are going to try each one of those cases over again.

The Court: No, we are not concerned with the past,

except it might possibly interpret the future from the past: but not to the extent of going through all these facts. It has already appeared, I presume it is not disputed, is it? It will be admitted that at least twenty-one people were arrested on that particular day and given hearings, and eighteen of them committed?

Mr. Covington: Yes.

The Court: And it was along this line of distributing, as you say—and selling, as counsel on the other side says—this literature?

Mr. Covington: That is right.

The Court: Then I would suggest that at least you confine it to the main lines, rather than the individual cases.

Mr. Covington: All right.

Q Now, Mr. Gundecker, from time to time you have occasion to go back to Jeannette as a member of your company, do you not?

A That is right.

Q And to preach this gospel in this way?

A Yes.

Q Do you desire to continue to preach this gospel in that way when you go there again in the future?

A I certainly do.

CROSS EXAMINATION

Mr. Trescher:

Q Mr. Gundecker, your name appears on Defendant's Exhibit "B". Did you authorize anyone to place your name on that printed exhibit?

A I know that we were to have this done. I don't know what you mean by an authorization.

Q Well, did you tell anyone that it would be quite all right—

A It met with my approval, if that is what you mean.

Q It met with your approval?

A Yes.

Q And you authorized the placing of your name at the end of that printed statement; did you?

A I couldn't say I had authorized that. I didn't know this was going to be made up.

Q Who talked with you about that?

A The only one that talked to me was when I was in the— in confinement at the jail.

Q Well, who was it that talked with you about it then?

A One of the brethren; I don't remember.

Q Did you know that that printed statement was being made up by anyone?

A I did not know it at the time.

Q Did you know it was being distributed on the streets in Jeannette?

A Yes, I had.

Q What is it?

A I did.

Q From whom did you learn that?

A From some brother.

Q Who was that brother?

A The ones that went in with me. I don't recall the name now. I didn't pay that much attention to it at the time; it was just a matter of conversation.

Q Well, that was written and distributed a year after you were arrested, wasn't it?

A No; this was distributed while we were in jail, if I remember correctly.

Q I think, Mr. Gundacker, you had better consider that again. It would take some little time to print that, would it not?

A That is right; it would.

Q And your case had been before the Supreme Court already when that was printed?

A If I understand the question correctly, this literature was distributed while I was in jail.

Q Oh, no; you look at that and tell me whether you can identify it, whether you ever saw it before, and whether

you authorized anybody to put your name to the end of it?

A Well, I made no authorization; I cannot say I authorized it.

Q Do you know who wrote it?

A No, I don't.

Q Did you see it before it was distributed?

A I was in jail while it was distributed.

The Court: Well, not in Jeannette maybe.

Q (Continuing) No; you were not in jail in Jeannette, at any rate.

Mr. Covington: On April 5 I understand he was in jail in Greensburg, and that the case had already gone to the Supreme Court.

A Really, I can't—I am confused about the time. It seems to me that there was one of these forms, or what you may call it, at the time that I was in jail.

Q Do you know who was making it up?

A No, I don't.

Q Did you authorize your name to be added to it?

A No, I gave no authority.

Q Did you authorize anybody to distribute it on your behalf?

A No, I didn't authorize anyone, because I didn't have it at that time, didn't see it.

Q And you don't know where it was printed?

A No.

Q Or who had it printed?

A No.

Q Or who paid for the printing?

A No, I do not.

Q Or who arranged for the distribution—or, in fact, anything in connection with it?

A No sir. I do know that they were distributed; that is all I know about that, and that it met with my approval.

Q And that was after you had voluntarily submitted yourself to jail, rather than to pay the fine that had been im-

posed?

A That is right.

Q When did you first know that you were going to voluntarily submit yourself to the Westmoreland County jail?

A I think it was about a week before we went.

Q And at that time was the matter of printing these pamphlets discussed?

A I have a hazy idea it was, but I can't recall it.

Q Do you know who discussed it with you?

A No I do not.

Mr. Covington: We will call Mr. O'Connell as an adverse witness.

JOHN M. O'CONNELL, called by the plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Covington:

Q Kindly state your name, sir.

A John M. O'Connell.

Q Where do you live, please?

A Jeannette, Pennsylvania.

Q You are the mayor of Jeannette, are you not, sir?

A Yes, sir.

Q How long have you been mayor of Jeannette, please?

A Three years.

Q And you are familiar with Ordinance No. 60 of that City, are you not?

A Yes, sir.

Q That is the so-called peddling ordinance that is now in evidence here in this case?

A That's right.

Q You have heard the testimony of Mr. Hessler, have you not, as to how Jehovah's witnesses do this work from

door to door? You have heard how they approach the people?

A Yes, I heard that.

Q And offer the literature to them on a contribution—you heard that testimony, did you not?

A Yes, I heard him say that.

Q I will ask you this question: Have you ordered the police, the chief of police and the police of Jeannette, at any time in the past to arrest any of Jehovah's witnesses who might be found distributing literature and receiving money therefor?

A No I did not order it in those words; they were ordered—

Q Just tell us what you did do then, mayor.

A I told them, if they found any evidence of violation of this ordinance, they were to arrest these people that were guilty of the violation; in other words, if they were selling the literature, they should be arrested.—

Q Now, what did you consider—

Mr. Trescher: Let him finish his answer.

Q Are you finished with your answer there?

A There were many people investigated at various times; none of them were arrested except those against whom the police obtained evidence of sale.

Q Now, what do you consider as evidence of guilt under the ordinance? So that we can understand what your intentions are relative to its enforcement.

A Well, it is the contention of Mr. Hessler and some of his group that by the presentation of this card they are not soliciting funds; but most of the cards—of which they seem to have three or four different kinds—most of the cards, in conclusion, ask for a contribution for this book.

Q That is right. Now,—

A Several times, when people were arrested, and the only evidence we could obtain was a presentation of that card, they were dismissed; but where the people were willing to testify that they were asked to pay for this

booklet, we arrested them. It is my intention to continue to enforce that ordinance in the same manner.

Q Now, assume for the purpose of—I am just trying to get what your intentions are relative to this ordinance. Now, assume I am one of Jehovah's witnesses, and I walk up to your door and knock, and you come to the door, and I say, "Good morning, Mayor O'Connell. I have here a book entitled 'Enemies', that shows who the enemies of man are, as explained by Bible prophecies. If you are interested in this book, you can obtain it on a contribution of twenty-five cents." Now, would you consider that a violation of the ordinance?

A Yes, I would.

Q And anyone found offering literature in that manner would be prosecuted under the ordinance in the future. Is that correct?

A That is correct.

Q And likewise, if this booklet "Angels" and another—or two others (indicating)—were presented to you at your door in Jeannette, three, on the contribution of only a dime, you would prosecute. Is that correct?—these three booklets here for a dime (indicating).

A Well, it is rather difficult for me to give you what might or would be done in any particular circumstances. It is my intention to enforce that ordinance, and we will continue to enforce it as we have done in the past; treat each particular case on its merits.

Q I understand that, mayor, but we are just trying to find out what your intentions are now.

A Well, I am trying to explain my intentions.

Q Maybe we can agree one with the other, if any money passes between the occupant of the house and Jehovah's witnesses in consideration of the exchange of the literature, that would, in your opinion, constitute a violation of the ordinance?

A No, sir, I did not say that. I have never so contended.

Q Well, what do you contend?

A In each particular case where there was a conviction there was positive testimony that a solicitation had been made for a contribution. If the contribution was voluntary, without a solicitation, I do not consider it a violation of that ordinance.

Q The ordinance doesn't say anything about that, does it, mayor? The ordinance says "Whoever shall solicit orders or sell within the borough". Isn't that the way it reads?

A I think so.

Q Now, if I approach your door and offer that book to you (demonstrating), and state you can obtain it on a contribution of twenty-five cents, you would consider that a violation of the ordinance. Is that correct?

A That is right.

Q And you would continue to prosecute anybody found to distribute literature in that manner. Is that right.

A Yes, sir.

Q How many of Jehovah's witnesses have been arrested in Jeannette, if you remember, mayor? How many have been tried down there and convicted, all together?

A Well, I think originally there were three or four.

Q Three or four. And then the next time there were eighteen. Is that not correct?

A Twenty-one, three of whom were discharged for lack of evidence; and then the next time there were—

Q Eight.

A Eight.

Q Now, do you know whether or not any other of Jehovah's witnesses have been arrested since that time?

A Yes, there have been several arrests. They were discharged for lack of evidence.

Q Yes; discharged without a complaint having been filed against them?

A I guess that is right.

Q Because there was a lack of evidence against them. Now, is there a standing order with the police to enforce that

ordinance in case they find that Jehovah's witnesses are presenting this book (Exhibit 3) to the people, or any other book like it, and asking a contribution? What are the orders you have given the police, or has the chief given the police, on that?

A Well, the instructions are to enforce that ordinance at all times. We not only enforce the ordinance against Jehovah's witnesses but against all others. We have numerous peddlers and people coming in there selling articles, that go from door to door. We never know they are in the town until we get complaints from the people. Ordinarily the complaints about Jehovah's witnesses were more numerous, because they came on Sundays. They always came on Sundays. People seem to object to being annoyed on Sunday at their homes.

Q Do you remember the occasion when Mr. Hessler came down and presented to you—first to the chief of police and then to you—this little story (handing Exhibit 2 to witness)?

A Yes, I remember that.

Q Now, mayor, do you make any distinction between one who offers literature for sale and one who offers merchandise other than literature, under the ordinance? In other words, as far as peddling or hawking is concerned, to your mind it makes no difference whether they were distributing literature or whether they were distributing potatoes. Is that correct?

Mr. Trescher: I think you ought to take it out of the category of farm products, because under the law of Pennsylvania there is a difference there.

A The ordinance itself explains the various things which are violations of the ordinance.

Q Yes, I understand that. All I am asking now is, do you make any distinction between products like merchandise, that is, groceries or drygoods, from literature?

A Well, as I have said, we try each particular case on its merits; and if you refer to these pamphlets and booklets

and potatoes, then I would say that we make no distinction.

Q No distinction at all?

A No.

Q Now, mayor, do newsboys sell newspapers on the streets of Jeannette?

A Yes; and we don't interfere with them. Neither do we interfere with your Jehovah's witnesses when they are selling these things on the street.

Q What is that?

A I say, neither do we interfere with Jehovah's witnesses when they sell these things on the street.

Q Well, newsboys have news routes in Jeannette, do they not?

A Yes.

Q And they distribute newspapers from door to door, do they not?

A Yes.

Q And they receive money for it, don't they?

A Yes.

Q Do you prosecute any of the newsboys for carrying news routes in Jeannette?

A No.

Q You don't. Why not?

A Because I don't believe it would be lawful for us to do that.

Q Well then, why is it you believe it is lawful to prosecute one of Jehovah's witnesses for distributing literature like this, that is printed matter?

The Court: I am afraid this is getting rather in the realm of argument.

Mr. Covington: Yes, I think so, Your Honor. I withdraw the question.

Q Mayor O'Connell, when this matter of appeal came up before Judge Laird from these eighteen men, that is the presentation of their appeal to the Court of Quarter Sessions, the first time, you appeared there, did you not,

before Judge Laird ruled on the matter; to persuade him not to allow the appeal—did you not?

Mr. Trescher: That is objected to, at least the form of the question. He might ask him whether he appeared there, but the use of the word "persuade" I think is uncalled for.

The Court: What did he do in connection with it?

Q Did you have conversation with Judge Laird, either in or out of open court, relative to a denial of these appeals?

A Well, if you want a complete answer, I will give it to you. Mr. Trescher at that time, I believe, was at of town; I am a member of the bar, and I called Judge Laird and told him I understood there would be an appeal sought, and told him that I would like to have the right to oppose the appeal. And he said "Well, the appeal will not be granted in your absence." When they came in and asked for the allocatur, I was notified to appear in open court to oppose it, in the absence of our solicitor. The only conversation I had with Judge Laird was over the phone, in which I notified him that I would like to have the right to oppose the allowance.

A Did you later appear in court and oppose it?

A I did.

Q Yourself?

A Yes, sir.

Q When?

A On the day the motion was presented—or the petition was presented asking for the allocatur.

Mr. Trescher:

Q You are a member of the bar of the Supreme Court of Pennsylvania and also the Court of Common Pleas and the Court of Quarter Sessions of Westmoreland County?

A I am.

PLAINTIFFS REST.

DEFENDANT'S CASE

JOHN M. O'CONNELL, recalled on behalf of the defendant, having been previously sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Mr. O'Connell, you have already been sworn. State whether or not each time the members of Jehovah's witnesses, or anyone else who has come before you, have been given a full and fair hearing on whatever charge may have been against them.

A They have been given a complete hearing.

Q When they first came there on April 2, or shortly before April 2, 1939, did you have some conversation with Mr. Hessler?

A Yes, I believe I did.

Q Was that a day or so before their arrest on April 2?

A I believe I had no conversation with Mr. Hessler until after the original arrests were made. There were four people arrested, I believe, originally.

Q That was the latter part of March, 1939, was it not?

A I can't be sure of the dates, but I believe that is correct.

Q And what was the substance of that conversation with Mr. Hessler?

A Well, I told Mr. Hessler when he came there representing these people that we did not object to the distribution of this literature. He contended that it was being distributed as a matter of conscience with them. I told him we had no quarrel with that and wouldn't object to it, if they would distribute the literature free of charge, but the complaints seemed to be that they were trying to force these sales on the people on Sundays and the people seemed to object to that. And I asked him if it

weren't possible for him to come on some other day, and if it wouldn't be possible for him to distribute this literature without trying to sell it; and he said that was contrary to their method of doing business and refused to comply with my request. And I told him that I have no alternative other than to enforce this ordinance.

Q And then did he make any threat with reference to what he would do, or his organization would do, if you attempted to enforce the law?

A He did. He said "Well, we are not going to abide by your ordinance." He said, "I will bring enough people in here that I will get the job done, whether you like it or not." In the meantime, they had taken an appeal on the original case, in which there were four people convicted. Then I asked him if he wouldn't await the outcome of that appeal, and he said he would not wait for anything, they were going to make us like it—or words to that effect. And that is why I opposed the appeal in the second instance. The first appeal was still pending, and during the pending of that appeal—or while the appeal was pending, rather, they brought a hundred and eighteen people there all at one time, on Sunday morning, to—to just make it uncomfortable for us.

Q Were you in the police station during that particular day?

A I was.

Q During how much of the day were you in the police station?

A Well, I believe I got there about nine-thirty or ten o'clock in the morning, after these complaints became so numerous at my home and the police department called me and said they were getting numerous calls; and I stayed there then from nine-thirty or ten o'clock until about four in the afternoon.

Q Will you give the Court some idea of the number of complaints that were received at the police station or at your home, or anywhere else, during that day?

A Well, before I left the house in the morning I must have had twenty-five or thirty calls, and while I was in the police station the phone was ringing constantly all day long:

Q All the time?

A Yes, just one call after the other. And the police and the fire department went out to investigate these complaints, and they talked to the people that made the calls, and only in the places where they felt they had evidence did they make an arrest. They stayed there all day. They went from house to house. In many houses people were called on two or three or four times, by different groups.

Q And during the course of the day, I believe you stated that some twenty-one persons were arrested; and against how many of those individuals was there evidence of commercial violations?

A Eighteen.

Q And did you dismiss those against whom there was no evidence of actual bartering or trading?

A I did.

Q And the rest, I believe, were held for court?

A No, I fined them.

Q I mean, the rest were convicted and fined?

A Yes.

Q And there were later appeals to the several courts of the Commonwealth. Is that correct?

A That is correct.

Q And finally a petition for a writ of certiorari to the Supreme Court of the United States?

A That is right.

Q And Ordinance No. 60 was the ordinance that was involved in that petition for review to the Supreme Court?

A That is right.

Q The certiorari in that case was refused, I believe, and a petition for reargument refused?

A Yes, it was refused both by the Supreme Court of Penn-

sylvania and by the Supreme Court of the United States.

Q And the record of that case is at No. 722 October Term; 1939, in the Supreme Court of the United States. ✓

A I think that is the record. I might say, before the Court of Quarter Sessions the allowance of the appeal was denied on the day that I opposed it—in order to make the record straight here. Then they petitioned for a rehearing before Judge Laird of the Quarter Sessions Court, and the rehearing—or reargument was granted, at which I did not appear; the solicitor for the City appeared at that time.

Q That is, myself; I had returned and was in court at the reargument?

A That is correct.

Q Now then, after the Supreme Court of the United States denied a certiorari and denied a reargument in the case of Stewart vs. the City of Jeannette, state whether or not any request was made from counsel for the eighteen defendants in that case, through me, relative to the incarceration of those individuals in the jail either at Jeannette or the Westmoreland County jail at Greensburg.

A Well, it is my recollection that they asked that they be permitted to surrender themselves—on—I think the day was Saturday, and they fixed the date; they fixed the date themselves, and asked that I commit them to the Westmoreland County jail, which I did. And I sent the commitments to the jail, and they voluntarily surrendered themselves to the Westmoreland County jail at Greensburg.

Q And that arrangement was made at least several days before, was it not?

A Yes.

Q And I believe was made through counsel, both for these defendants and for the City of Jeannette?

A That is right.

Q And in accordance with that arrangement, you merely

sent the commitments up to the Westmoreland County jail?

A I did.

Q Now, on the day that these defendants did voluntarily surrender themselves to the jail, in lieu of paying the fine that had been imposed by you, state whether or not Exhibit "B" (handing same to witness) was distributed through the streets of Jeannette.

A It was distributed through all the streets of Jeannette; and I was informed by various people who brought sample copies of that to me that they were distributed from Trafford, in the western part of the county, as far east as Latrobe; they were distributed in Trafford, Greensburg and Latrobe.

Q Does it contain references to yourself and to Judge Laird, of the Court of Common Pleas of Westmoreland County, which are untrue?

A Yes, and—

Mr. Covington: Now, that is an untrue question; that is a matter that speaks for itself.

The Court: Yes. Of course, you can ask him about certain particular matters, although I think we are getting pretty far beyond the scope.

Q Now, Mr. O'Connell, I believe again in February there was testimony that a number of Jehovah's witnesses—eight, I believe, to be exact—were arrested and convicted. Is that correct?

A That is correct.

(Book marked Defendant's Exhibit "C")

Q And is Defendant's Exhibit "C" a record of the testimony which was taken at the hearing before you in the cases of those eight individuals?

A It is.

Q And you have stated to the Court that in those cases, as well as in others, unless you had evidence of actual bartering and selling you did not undertake to fine or convict any of these individuals. Is that correct?

A That is correct.

Q And that is the situation with reference to these individuals where the verbatim testimony appears in this record?

A That is right.

(Adjourned until Monday, February 24, 1941, at 1:30 o'clock P.M.)

Monday, February 24, 1941.

AFTERNOON SESSION

JOHN M. O'CONNELL resumes the stand.

DIRECT EXAMINATION (continued)

Mr. Trescher:

Q Mr. Hessler has stated, Mr. O'Connell, that in going to Jeannette members of Jehovah's witnesses went there for the purpose of what he describes as witnessing or preaching the gospel. Did the actual practice bear out that statement, as demonstrated by the testimony in the several cases before you?

Mr. Covington: We object to that, may it please the Court, because it calls for a conclusion and opinion on the part of the witness; and secondly, the proceedings themselves would be the best evidence.

The Court: It has been transcribed, I believe?

Mr. Covington: Yes, and I believe it has been identified; and we have no objection to his introducing that as evidence.

Mr. Trescher: My purpose was to avoid offering the whole record, but if the Court wishes, or Mr. Covington wishes, I will be glad to submit the whole record.

The Court: Well, we will permit you, when the time comes, to offer the whole record, and read so much as you care to.

Mr. Trescher: Mr. Hessler was permitted to make general statements with reference to a practice, when he obviously and plainly could not have been present when they actually occurred.

Mr. Covington: We have no objection to the introduction of any part of the minutes at all, but we do object—

The Court: The trouble is, you were asking to exclude that which you wanted in with your own witness. We opened the door very widely for your witness in a great deal of this matter; and, of course, it does not come with very good grace for you to shut it in the face—

Mr. Covington: I am not trying to shut off any evidence. I am just trying to say that this testimony here would be a conclusion and opinion on the part of the witness, and hearsay.

The Court: Yes, I think he can do this. I do not know that the record in itself as transcribed has any more virtue than his own recollection. He is entitled to testify to his recollection as to what testimony was given before him in that respect.

Mr. Covington: I should think, then, that would be the best evidence, the stenographer's minutes, which counsel has already identified.

The Court: No, it is not; I think you will find, if you look at the textbooks, they are all on an equal plane, that it is only the recollection of the person who transcribed them, at best.

Mr. Covington: The matter is being tried before the Court, and any ruling on the evidence would not be prejudicial, at any rate. We will rest on your objection.

The Court: The objection is sustained.

Mr. Trescher: That is all. You can cross-examine.

Mr. Covington: That is all. No questions.

Mr. Trescher: If the Court please, I offer in evidence the record of the notes of testimony taken before Mr. O'Connell, as mayor, Defendant's Exhibit "C".

Mr. Covington: I have no objection.
The Court: It is admitted.

Mr. Trescher: I would like to call Mr. Hessler for further cross examination.

CHARLES R. HESSLER, recalled for further cross examination, testified as follows:

CROSS EXAMINATION

Mr. Trescher:

Q Mr. Hessler, I believe you told us when you were on the stand as a witness for the plaintiffs here that the Kingdom Service Company derived its income from individual contributions. Is that correct?

A Some from individual contributions, yes; in fact, they are all contributions.

Q Well, which did you say?

A They are all from individual contributions.

Q They are all from individual contributions?

A That is right.

Q You now repeat that statement, do you?

A To clarify that point, they are received by the Kingdom Service Association through the various groups or companies that these individuals are associated with.

Q So that the contributions, or the great bulk of them, to the Kingdom Service Association are not received from individuals, but are received from the different companies. Is that correct?

A Yes; from the different groups, but primarily it comes from individuals.

Q Now, when the records of the Kingdom Service Association show membership, what does that mean?

A That means that those Christian men and women who desire to have a share in carrying on the expense of these court trials, and who desire to assist parents of children

who have been expelled from public schools to receive an education in the common branches—reading, writing and arithmetic—and other studies prescribed by the State Code, may do so. Many of the parents are unable to send their children to a private school, and Jehovah's witnesses assist them to the extent of their ability.

Q Now, the actual entries marked "Membership" make up a very, very relatively small part of the contributions to the companies, do they not?

A That is right; to the Association.

Q Here, for example, in the month of July, 1939, the memberships appear to be substantially one-fourth—or one-third of the contributions, and the different companies make up the principal contributions?

A That is right.

Q Now then, how is a company's contributions determined each month?

A It is voluntary contributions on the part of the individuals that are associated with that, that turn that money into the company, and to whatever extent the company desires to send to the Association they may do so. If they do not desire to send any, that is their privilege; there is no request ever made for any money.

Q You mean to say, there is no connection between the number of books that the company disposes of and the amount that it contributes to this Kingdom Service Company?

A Yes; the Kingdom Service Association has nothing to do with the amount of literature or anything, or whether they put out any literature. The Kingdom Service Association—if you will permit me to clarify—is simply a vehicle or instrument or agency that is used by Jehovah's witnesses in this vicinity to be enabled to meet the cost of the interference on the part of municipality officials who have sought to enforce commercial ordinances against this type of work.

Q Exactly. So that the Kingdom Service Company financ-

es your legal fights against the various commercial ordinances in the several municipalities. Isn't that right?

A Well, it is an association that is being used by Jehovah's witnesses—

Q For that purpose?

A —to carry a burden that any individual or any individual group would be unable to do alone.

Q Yes. So that each one of these companies who contribute to the Kingdom Service Company, in return, have their cases looked after by the representatives of the Kingdom Service Company. Isn't that a fact?

A That is right.

Q And your expenses are virtually all for legal expenses?

A Exactly.

Q Is that right?

A And operating the Kingdom schools.

Q The income of that company, as contributed by the various companies who are associated with it or contribute to it, seems to run somewhere between two and four hundred dollars a month, does it not?

A Well, approximately that, between that.

Q And the amount expended during most of this period for legal services runs perhaps three to four times as much as you spent for the maintenance of this school that you speak of?

A Well, I would say that the—No. The operation of Kingdom school at the present time is almost equally as much as the legal expenses. It runs around \$200 a month at the present time for operating the Kingdom school, because that includes the amount of money that is spent for board, so many of the children have to be transported.

Q During the month of January, your record shows, Mr. Hessler, that some \$405.37 was expended for various items that have to do with legal cases that are in court on behalf of the different companies, as against \$154.60, the entire school expense.

A Well, the school, of course, is operated every month; the legal cases, it is spasmodic. They may have a lot of bills come in one month, and then not have so many the next month or two. For instance, if you notice, the records there show since March, 1939, the total amount of legal expenses in connection with the City of Jeannette was around twelve hundred and some dollars, and then filing fees and printing and other expenses made another six hundred dollars, making a total of about eighteen hundred dollars over a period of about two years. Then, in addition to that, there have been expenses in other communities which have had to be met also. Now, the only way that money could be possibly met would be the voluntary contributions of the part of Christian men and women who are interested in trying that this message of Almighty God's kingdom continues to go to the people, regardless of any interference, because these men and women sincerely and honestly believe—

The Court: Now, answer the question, please, and don't get so much extraneous matter in.

Mr. Trescher:

Q In the month of September, for example, you paid \$371.70 for legal expenses against \$75.56 for school expenses. Isn't that right?

A That is right; whatever those figures are.

Q And the sum of \$10.73 for the operation of a sound truck?

A If that is what those figures are; I don't just recall them.

Q During the month of October you spent \$239.25 for legal expenses as against \$99.72 for school expenses and \$64.08 for sound truck; and during the month of November, 1940, \$139.68 for legal expenses as against \$137.04 for school expenses. Is that right?

A If that is what those figures show.

Q And during the month of December, \$143.10 for legal expenses as against \$137.97 for school and \$16.43 for a sound truck; and January, 1941, I believe we have, and

that is the last month. Taking at random back to December, 1939, your legal expenses—for legal fees and the like—were \$436.30 as against \$5.49 for the operation of a school. Is that right?

A Well, in January—

Q I am speaking of the month of December, 1939.

A Well, whatever expenses you have there in that month.

Q In January of 1940 it shows \$136.15 for operating expenses, legal expenses, as against \$8.67 for a school?

A Yes. In 1939, beginning of 1939, the children were sent back to the public schools, most of them were sent back, and at that time it reduced the cost of operating the school at that particular time.

Q During the month of February, 1940, you spent \$50.44 for legal expenses as against \$1.25 for school expenses?

A That was at a time when the school was closed.

Q And during the month of March, 1940, you show a total of \$304.06 for legal expenses as against \$91.25 for a school?

A That is right.

Q And \$5.38 for a sound car. And during the month of April, 1940, you show \$52.69 for legal expenses as against \$217.68 for operation of a school, the latter figure including \$147.50 for taxes?

A That is right.

Q And during the month of May, 1940, you show \$166.03 for legal expenses as against \$74.73 for a school; during the month of June \$31.31 for legal expenses as against \$60 for a school and \$16.50 for a sound truck; and during the month of July \$438.53 for legal expenses as against \$68.33 for school expenses?

A Yes, sir.

Q And in August \$83.25 for legal expenses as against \$61.25 for school; and during the month of September, 1940, \$371.07 for legal expenses as against \$75.56 for school; and during October \$239.25 for legal expenses as against \$99.52 for school?

A Yes, sir.

Q And November and December I think we have had. Now, Mr. Hessler, I believe you also told the Court that you had never personally received more than \$15 in any one month for expenses, did you?

A Yes; I was trying to bring the Court's attention to the fact that it did not exceed that at any time, and I would like to qualify that statement now.

Q You would like to correct that?

A To the point that the money I have received was in refund for expenditures that I have made on behalf of the Kingdom Service Association.

Q During the month of January, 1941, I believe you received payments, whether in reimbursement or otherwise, in an amount in excess of \$100, did you not?

A Yes, that is right.

Q That totaled in the neighborhood of \$115?

A Whatever it was, it was in payment of whatever money had been expended or was going to be expended.

Q Do you further wish to qualify your statement with reference to \$1700 having been spent conducting the litigation which had been instituted by the City of Jeannette?

A Yes, to the statement it has been over seventeen hundred, that the records there show to the extent of eighteen hundred.

Q Mr. Hessler, I ask you whether or not between three and four hundred dollars of the bills which you say make up the eighteen hundred dollars do not apply to expenses which you have contracted in this particular case which is now pending before the Court. Is that not a fact?

A I believe some of the bills that are recorded there are as the result of the necessity of bringing this suit.

Q And they are included in the eighteen hundred dollars of which you speak, are they not?

A I believe they are.

Q And some of them here—for example, a bill of Mr. Kahanovitz for \$200, as yet unpaid, at least does not affirm-

atively appear to have been in connection with Jeannette cases. Is that correct?

A Yes; that still is an amount due Mr. Kahanovitz on the original bill.

Q And what Mr. Kahanovitz did in connection with the Jeannette cases was to appear in court once when appeals were granted, and once to oppose the appeal, and once to reargue—

A And to prepare—

Q The case?

A No,—and to prepare an appeal to the Superior Court.

Q And Mr. Kahanovitz, in connection with that service, had previously been paid some \$150 or \$200. Is that right?

A That is right.

Q And yet you say there is an additional bill of some \$200, which you include in this \$1800; and which has not been paid?

A That is right; it has not been paid.

Q Mr. Kahanovitz, to be exact, had previously received exactly the sum of \$200 for his services in connection with those Jeannette cases.

A I can't be positive just exactly how much he has received.

Q And yet you say that this statement for services—

A All those bills there (indicating) that are made out by Mr. Kahanovitz are in connection with the arrests at Jeannette.

Q And that voucher for that was not made up until February 28, 1941?

A Well, that particular voucher there, yes, in order to show that Mr. Kahanovitz still has a bill due him for \$200.

Q Isn't there something wrong with that (handing paper to witness)? We are not even in the 28th yet.

A Well, whatever—the voucher was made up to cover this

letter, calling attention to the fact that there was still \$200 unpaid.

Q When was that voucher made up, if you know?

A Well, I don't know what date it was made up, but that is the date that is on there.

Q And what is the number of it?

A 513.

Q And No. 512 is a bill from Mr. Epstein which was rendered last July—That is July 11, 1940—while your voucher bears the date January 18. Is that correct?

A I presume it is.

Q Do you know when that voucher was made up?

A No, I don't know when that voucher was made up, but it was made up in connection with some of the outstanding bills that Mr. Epstein had still unpaid.

Q A number of the items that you have charged as legal expenses include gasoline bills which were paid for you—

A Some gasoline bills, yes.

Q (Continuing)—and in one case I believe a tube for your automobile is charged as a legal expense?

A That is right.

Q And some \$300 is in connection with this case which is now pending before this court?

A Well, I couldn't tell you the exact figures or amount pertaining to this case, but Mr. Stewart or Mr. Petty could give you the exact figures on it.

Q Then do you have with you any of the records of the Allegheny company of Jehovah's witnesses?

A We have asked they be produced here in court. He is not the officer in charge of them; but you may have them. They are right there on the table.

Q All right; anyone here that is familiar with it?

Mr. Covington: Mr. McKnight—I mean Mr. Stewart, Sr. Now, that is a misnomer; there is no such thing as Allegheny company of Jehovah's witnesses, but that is the company of Jehovah's witnesses that is located in

the Wabash Building, that you requested in the notes.

Mr. Trescher: Are the books and records from the Duquesne company here?

Mr. Covington: I don't know; we telephoned for them.

The Witness: Yes, we telephoned for them and they are here.

Q Are you familiar with them?

A No, I am not.

Mr. Covington:

Q Will you explain what the sums were for that you received during the month of January, 1941, from Kingdonr Service Association, in connection with what case, what they were for?

A I would have to look at the vouchers.

Q Well, we will do that later.

GEORGE SERENCO, a witness called by the defendant, having been duly affirmed, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Will you state your full name, please?

A George Serenco.

Q And where do you live, Mr. Serenco?

A Duquesne, Pennsylvania.

Q Are you connected with any of the companies of Jehovah's witnesses?

A Yes, sir.

Q What company?

A Duquesne company.

Q And do you have the records of the Duquesne company with you?

A I have some, yes.

Q And do you have a record which shows a merger of a supposed Jeannette company with a Duquesne company

during the year 1937 or earlier?

A The company was not under Duquesne at that particular time.

Q Well, are there any records here which would show the existence of a Jeannette company and its merger with a Duquesne company at any time?

A I can't answer that.

Q Well, do you have the available records of the Duquesne company?

A I have, pertaining to some of the activities, yes.

Q Mr. Hessler testified that there was a Jeannette company in existence at one time, either during the year 1937 or prior to that time, and that it merged with the Duquesne company. Do you have any records which would show that merger?

A I have some letters—I haven't got them with me—that I went to receive some of the literature when the company was dissolved.

Q I believe you can answer that question. Are there any records which you have with you, or which you know of, in existence, which shows the merger of a supposed Jeannette company with the Duquesne company?

A You mean prior to 1939?

Q At any time.

A I have no records pertaining prior to that time.

(NO CROSS EXAMINATION)

CHARLES H. STEWART, a witness called by the defendant, having been duly sworn, testified as follows:

Mr. Trescher:

Q What is your name please?

A Charles H. Stewart, Sr.

Q And what is your occupation, Mr. Stewart?

A I am head clerk of the Auditor General's office, Pittsburgh & Lake Erie Railroad, Pittsburgh.

Q And where do you live?

A 317 Grace Street, Mount Washington.

Q You have with you in court, I believe, the books and records showing the receipts and disbursements by the Allegheny company of Jehovah's witnesses throughout the year 1940, have you?

A No, that would not be a correct statement; it is the Central Unit, Pittsburgh Company of Jehovah's witnesses.

Q Central Unit, Pittsburgh Company of Jehovah's witnesses?

A With headquarters in the Wabash Building, Pittsburgh.

Q And do these records contain a separate column showing receipts and expenditures as the result of sale or distribution of books?

A The book you are looking at is the cash book, which represents that information, receipts and disbursements on that account.

Q Does it also show the receipts and disbursements from the sale or other disposition of magazines?

A It does.

Q And does it show certain payments to a zone servant?

A More particularly zone servant expenses, not to the zone servant; small expenses which were allocated to us, for which we made payment; no payments direct to the zone servant.

Q You obtain your books from the same company all the time, or were they from different companies or societies that you bought books?

A You mean the literature that is distributed to the public?

Q That you distribute, yes.

A Practically all of our literature comes from the Watchtower Bible and Tract Society, 117 Adams Street, Brooklyn, New York. We buy also Bibles from the World Syndicate Publishing Company, Cleveland, Ohio. Those are the principal sources.

Q There seems to be a pretty fair margin of difference be-

tween the receipts and expenditures from books. For example, during the month of August you received \$248.84 from the sale of books and paid out \$117.64. What happened to that difference, do you know?

A • It just simply lay in the account.

Q It just simply lay in the account?

A Yes, sir. Whatever discrepancies—I mean whatever differences would be, it would just simply lay in what is known as the book account fund.

Q And in that same month you received \$54.59 from the sale of magazines and paid out to the Watchtower Bible and Tract Society the sum of \$50?

A It would be just according to the records.

Q During the month of September, 1940, you paid out \$275.85 for books, and apparently for some expenses in connection with the sale of them, while you received \$474.08. Would that balance just lie in the account?

A It just lay in the account.

Q During the month of October you apparently paid out \$287.50 and received \$479.29. That lay in the account, too, did it?

A It would lay in the account.

Q During the month of November you paid out \$348.67 and received \$491.12. That difference just lay there, too.

A It lay in the account.

Q And during the month of December—

A I would like to call your attention to the fact the figures you are reading there are total figures.

Q Oh, yes.

A And they represent balance as carried forward. Those figures you have been giving do not represent the actual receipts during the month, but represent a total that is carried forward, including not only moneys received during the month but the balance carried forward from the previous month. In other words, the figures you are setting up by that statement there would show a pyramiding of approximately \$200 a month; that would not

be true. You see the point I make?

Q I now see that you show here for the month of December a balance at the beginning of the month of \$142.45, a total of \$398.14, and payments during that month charged to books at \$237.91. Are those payments outright payments, or are they merely charges?

A Anything that is set up there as a payment, there is a check for cash.

Q You mean there was actually disbursed during the month of December \$237.91.

A \$237.91.

Q But you did not receive the amount of \$398.14 for books during that month?

A \$398.14 represents the balance of \$142.42 and should be deducted in order to get the amount of receipts.

Q And at that rate your receipts would be considerably less than your expenditures, would they not? Can you stay in business that way?

A I don't know just exactly what you are driving at, but the amount we paid out here, \$260, is an amount coming out of a total of \$484.81, which was available for disbursements during the month, and that \$484.81 included a carry-over from the previous month of \$162.73.

Q Your total of a balance carried over during that same month appears to be \$254.38, as shown by the figure in the last column of that page. What does that represent?

A Well, up to this time you have been talking exclusively about the matter of books.

Q Yes, I have been.

A Now you are asking a question with regard to a total overall receipts, which include other accounts besides the book account.

Q Is \$162.73 included in that total of \$254.38?

A Oh, yes; that \$234.58 includes \$162.73 allocated to the book account.

Q Now, where do you show payments to Kingdom Service Company, if you make any payments to the Kingdom

Service Company?

A They are represented in here by cash checks.

Q All right. What do they show for the month of January, 1941?

A For 1941 we have no disbursements.

Q The records here show that an Allegheny unit paid to the Kingdom Service Company \$51.70. What would be the Allegheny Unit? What that be your company?

A No, sir; that would be a unit distinct from our company, a separate unit.

Q What is the name of your company?

A Central Unit, Pittsburgh Company of Jehovah's witnesses.

Q Here is another entry, of January 22, in the books of the Kingdom Service Company showing "Allegheny \$17.30". Would that be your company?

A No, sir.

Q Now, what do you say the name of your company is?

A Central Unit.

Q And you say it shows no payment into Kingdom Service during the month of January, 1941?

A That is right.

Q Now, the books of Kingdom Service Company show a receipt on January 13—or it might be January 22—of \$7.25 from Central Unit of Pittsburgh Company. Would that be your company?

A That is right.

Q All right.

A That is a check that we issued, check No. 710, issued December 27.

Q It appears to be in here under date of either January 13 or 22. And was that a payment to the Kingdom Service Company?

A Oh, yes, Kingdom Service Company.

Q Do your books show any payment to the Kingdom Service Company during the month of December other than that one that you have just—

A No, just the one.

Q So that there is an Allegheny unit of Jehovah's witnesses?

A That is right, yes, sir.

Q And there is an Allegheny Jehovah's witnesses. How do you account for the fact that there are two here, "Allegheny" and "Allegheny Unit"?

A Well, I think that is just simply an abbreviation of the fact that it is Allegheny Unit.

Q Both of those contributions are by the Allegheny Unit, one in the amount of \$51.70 and one in the amount of \$17.30?

A Yes.

Q Do your records show any contribution during the month of November, 1940, to the Kingdom Service Company?

A No contributions during the month.

Q And your particular unit maintains offices in the Wash Building. Is that right?

A Yes, sir.

Q Your company has a telephone there?

A Yes, sir.

Q And that same office is occupied by the Kingdom Service Company?

A Yes, sir.

Q The telephone seems to be paid by your company. Is that correct?

A Yes, sir, we pay the telephone bill.

Q Who pays the rent for that office?

A The Central Unit pays the rent.

The Court: I wonder if we are not taking just a little too much time on this phase of the case.

Mr. Trescher: Perhaps we are.

Q If the books show during the month of September, 1940, a payment of \$100 to Pittsburgh & West Virginia Rail-

read Company. What would that be for?

A That is the rental of the space that we occupy.

Q In the Wabash Building?

A In the Wabash Building, yes, sir.

Q When your Allegheny Company obtains books of the character of "Salvation", the payment you make to the Watchtower Company is five cents—is that correct—for each book?

A The Allegheny Company is a unit by itself; their transactions are with the Watchtower Bible and Tract Society. When we buy those books, we pay the Society a price of twenty cents per book.

Q You pay twenty cents per book?

A Yes, sir.

Q And you buy from the Allegheny company?

A No, sir; the Watchtower Bible and Tract Society.

Q Just so I understand: When the Allegheny Company obtains the books from the Watchtower Company, it pays five cents each, does it not?

A They would pay the same as we would pay. That is just answering what I would assume to be the case, they would pay the same price we pay.

Q Well, do you know how much the Allegheny company pays?

A I have no knowledge of the accounts of the Allegheny company.

Q There is testimony here that the companies pay five cents—

Mr. Covington: I make objection to that: counsel is assuming a matter that is not even so. The testimony does not show that.

The Court: I may be under a misapprehension, but that is the impression I had.

Mr. Covington: If the Court is under that apprehension, it is a misapprehension. The witness Charles H. Hessler testified that the pioneers, that is, the full-time workers—he himself being one—got the books direct

from the Watchtower Society and that they got them for five cents a copy, and that the company and company workers got them at twenty cents apiece. That is what the testimony shows.

The Court: Yes, I think that is right.

Mr. Trescher: I am willing to submit that on the record, whatever the record shows.

Q Do you know how much the companies pay the Watchtower Bible and Tract Society for these books?

A Yes, sir.

Q You do know that?

A Yes, sir.

Q You have actually ordered the books then?

A I am passing invoices—that is, the invoices are passing through my hands for payment.

Q And you know that they pay twenty cents?

A Yes, sir.

Q And when they turn them over to a distributor, that is a person who takes them from door to door, how much does the Allegheny company charge?

A You mean how much does the Central Unit Charge?

Q How much does the Central Unit charge?

A The Central Unit Charges the publisher twenty-two cents.

Q And by "the publisher" you mean the person who takes them from door to door and disposes of them?

A That is correct.

Q Twenty-two cents, you say?

A That is right. That is a private agreement amongst us, as publishers, that we do that.

Q By a "publisher" you mean the person who goes from door to door?

A Yes, sir.

Q And what do you call the Watchtower Company? Do you call that a publisher?

A They are publishers in the sense of being manufacturers of the books.

Q But when you refer to "publisher", you mean the person that goes from door to door to dispose of them?

A Yes, sir.

CROSS EXAMINATION

Mr. Covington:

Q Mr. Stewart, would you kindly take this book,—First, I ask you: The Central Unit is one of the divisions of Jehovah's witnesses in the city of Pittsburgh and vicinity. Is that correct?

A That is right.

Q Now, that is not a corporation, is it?

A No, sir.

Q It is an unincorporated company. When you say "company" what do you mean? Is that a group of individuals known as Jehovah's witnesses? Is that correct?

A That is correct. In other words, it is banding together of a certain number of people with a common aim.

Q Within a given area?

A Within a given area.

Q And this given area that is represented by the Central Unit is a part of Allegheny County. Is that correct?

A That is correct.

Q Now, first I ask you: You get the bound books from the Watchtower, such as the book "Salvation", for twenty cents. Is that correct?

A That is correct.

Q And the publisher takes them for twenty-two cents. Is that correct?

A That is correct.

Q And that is for what purpose?

A You mean the two cents?

Q Yes. What is the agreement there for the two cents?

A Well, as the publishers among ourselves agree to put the two cents—allow that to remain in the company's funds, to allow for wrapping paper and string, and pay for

freight on books—for instance, we have freight on Bibles to pay—and different small expenses in connection with the matter of the distribution of the books.

Q Then the account which counsel referred to when calling off the figures there of receipts included a balance that was carried forward from all the funds? Now, explain this book to the Court. What is that "Sound Car" account, "Book" account, and other accounts?

A Yes. A place where I have all the figures, a turnover account. This sheet (indicating), which is our cash book reference, shows receipts from the general fund—

Q Now, explain the general fund. What is that?

A The general fund is the expense fund, which comprises the matter of the donations or the contributions of the people to pay the expenses of rent and other legitimate expenses of the company.

Q Does the general fund—or do the general fund contributions come from the distribution of any literature?

A No; these are entirely apart from the matter of the distribution of literature.

Q Well, are they voluntary contributions from the members of the unit?

A They are voluntary contributions.

Q And not for the exchange of any literature. Is that correct?

A That is correct.

Q What is the next account?

A The book account.

Q Explain that.

A The book account in this book represents the accumulations of money turned in from the sale of literature, and ~~as it~~ ^{as it} is accumulated it is paid out by check to the—principally to the Watchtower Bible and Tract Society and for the purchase of Bibles to the Syndicate Publishing Company of Cleveland, or any other small expenses that might come under that head.

Q And what is the present standing of the unit with the

Watchtower Bible and Tract Society? Do you owe them money now for books?

A Yes, we owe them in the neighborhood of about thirteen hundred dollars for books. Do you want this next column?

Q Yes, I want you to explain it—
Mr. Trescher:

Q May I see that thirteen hundred dollar item?

A That is not in this book.

Q Oh, you are just telling about that from knowledge, you mean?

A Yes. This matter—What this book represents, magazine account, the Watchtower Magazine and Consolation Magazine, and the figures are accumulated, and as the sales are made disbursements are made, and that money is remitted to the Watchtower Bible and Tract Society, usually on a monthly basis, and the check so indicates. The next column is a small account, called Zone Servants' Expenses, and it has a small matter of \$2.05 in here in this particular instance, representing some small expense that had been turned in and which expense would be allocated among the several units, each one paying their part. The next represents Sound Car, this one I am looking at, this page I am looking at, expenses on account of a sound car, which may have been tires, or may have been gasoline, or it may have been something else—a battery. And on the disbursement side we have the several disbursements for the month to the same accounts.

Q Now, do the receipts, according to the records that you have before you, exceed the disbursements?

A The receipts in this book?

Q Yes. The unit down there maintains a hall and pays rent and expenses, does it not?

A Yes, sir.

Q Now, all of your expenses, is that taken care of by contributions from the literature that you get from the

publishers, twenty-two cents, and so forth? Explain that.

A The matter of expenses that are paid out of the book account are just simply the small expenses in connection with handling the books, alone. But the major expenses in connection with the company, such as the payment of rent and such other expenses that come, they are paid out of the general fund. We have our telephone bill, and we have our payment with regard to our water—

Q Well, what I am trying to drive at and get before the Court is: Do the receipts for the distribution of the books to the publishers, the members of the unit, exceed the disbursements for operation of the unit or is it less than the disbursements for the entire operation of the unit?

A The matter of the operation of the book account—

Q I am not talking about any particular account, I am talking about the entire unit now, the expense for the entire unit.

A The expense of the entire unit, including the purchase of books, would exceed the amount that would be paid to the Watchtower Bible and Tract Society for books. Does that answer your question?

Q No. Does more money come in for the books, books placed over the counter—the funds received from that, does that exceed the expenses for the operation of the entire unit there?

A The answer is no.

Q All right. Explain it. How is the deficit taken care of?

A The deficit in connection with the matter of the operation of the unit is taken care of by contributions through the general fund account.

Q Now then, explain what the general fund account is, and contributions.

A The general fund represents the contributions by the individuals which come in to the treasurer; and through that fund, the general fund, we pay the expenses of the

company; so that the expenses of the company itself are carried along—rent, whatnot—those things, for instance, as we specified, the telephone bill, water bill, and other expenses like that, are all taken care of through the voluntary contributions.

Q On the book account—these balances that he was speaking of here, about receipts showing a total of four hundred and various high figures here—that includes the balances carried forward?

A That is right.

Q Now, turn each month and give us the total receipts less the balance carried forward.

A Well, going backward, the total, including the balance carried forward, for January was \$484.81; the balance carried forward in that month was \$162.73; the difference—

Q \$322.08?

A \$322.08.

Q Now, of that \$322.08 are to be included contributions from the general fund. Is that correct? Or is that from the book account?

A We are talking about the book account.

Q All right. Now then, what are the disbursements?

A We disbursed during the month of January the sum of \$260.06 from the book account.

Q So that leaves a balance of \$56.02, does it not?

A No; the balance as of February would be \$226.15.

Q That is 162 plus 56—is that correct?

A I didn't get that.

The Court: Don't you think you are going into this altogether beyond what is really required, considering the materiality and value of the testimony in the case? To my mind, it is of very, very small moment, the whole thing, and yet you are taking up a lot of time with it.

Mr. Covington: I think so, too, but he brought it out on direct.

The Court: You have your testimony in, and unless

that is shown to be contrary by the other side, I would accept it, of course.

Mr. Trescher:

Q You stated that you owe the Watchtower Company some thirteen hundred dollars for books that you have gotten in the past. Do you have any books or records showing how much the different publishers owe you? And I refer to the Allegheny unit.

Mr. Covington: Allegheny? He doesn't have the Allegheny.

Mr. Trescher: The Central Unit of Allegheny County, then.

A Yes, I have such a record.

Q How much does that total?

A Well, approximately the publishers owe the unit in the present time about sixty to seventy-five dollars, I would say.

Q Is that the total?

A That would be the approximate total.

Q That is, they may charge their books when they take them away?

A They may.

Q And who has charge of that distribution?

A You mean the matter of the account.

Q Yes. Who deals them out or turns them over to the person who buys them?

A Mr. Harry Faill. You mean the actual books themselves?

Q Yes.

A Yes.

Q And do you have any inventory on hand of the books on hand, its actual value?

A Yes.

Q How much is it?

A We took an inventory recently of the books on hand, and it was valued at approximately \$520.

Q Worth of books?

A The books on hand.

CHARLES E. WALTER, a witness produced on behalf of the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q What is your position with the City of Jeannette, Mr. Walter?

A Chief of police.

Q And were you the chief during March and April of 1939?

A Yes, sir.

Q And do you know Mr. Hessler?

A Yes, sir.

Q Were you present in the office of the police station when Mr. Hessler came in there the latter part of March, 1939?

A Yes, sir.

Q Did he, prior to the date when a large number of Jehovah's witnesses came there about April 2, 1939, hand you a list of persons whom he intended to bring into town?

A That was on the Sunday that the arrest was made, when there was a hundred or more, after the first arrest was made.

Q Did he hand you that list that day?

A Yes, sir.

Q Or before that? When did he hand it to you?

A The second Sunday that they made the visit in Jeannette, when there was a hundred or more came into town.

Q Well, was it the same day the arrests were made, or was it—

A The same day the arrests were being made.

Q Before, as Mr. Hessler has testified. Now, did you have some conversation with Mr. Hessler before that group came into town that day?

A Not prior to that.

Q Was he in the police station at all prior to that time?

A The only time he was in the police station was the Sunday the arrest was made—prior to that day, the first Sunday that we had made arrests.

Q When did you first make the arrests?

A That was two weeks prior to that date. I don't recall the day. There was five persons arrested.

Q And those cases, as I understand it, were pending in court—

A That is right.

Q (Continuing)—when the large group came in on April 2?

A That is right.

Q Now then, what if anything did Mr. Hessler say when the six persons were arrested some two weeks prior to April 2, 1939?

A After the mayor had arrived, he and the mayor were discussing about whether they had a right, or not, and the mayor insisted on posting bond for a hearing, which was done; and during the course of conversation Mr. Hessler said, "We will be back; and be back with more than the Jeannette police can handle"; but there was nothing said as to when they would be back.

Q Now, will you give the Court some idea how many complaints were received at the police station in Jeannette when this group of Jehovah's witnesses were in Jeannette during the middle of March, 1939?

A The Sunday that there was better than a hundred there there were so many telephone calls coming in the police department that it was referred to the fire department by the operator. The telephone was busy in the police department, and they were sending the calls in to the fire department, which was in the same building.

Q How long did that continue?

A That day?

Q Yes; the receipt of complaints.

A Until late in the afternoon.

Q Can you give the Court some idea of the total number of them?

A According to the list Mr. Hessler gave me, there was a hundred—

Q No, the total number of complaints?

A Oh, the total number of complaints?

Q Yes.

A Well, I suppose in the course of the day there would be at least fifty to seventy-five complaints.

Q Were they all in the police station alone?

A From the time they first arrived until they had left town.

Q Were you present during the day that the arrests were made in February of 1940?

A No, I was not; I was sick at that time.

(NO CROSS EXAMINATION)

THOMAS MILBURN, a witness produced on behalf of the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Mr. Milburn, you are chief of the fire department at Jeannette?

A Yes.

Q Were you present in the police station about the middle of March, 1939, when Mr. Hessier made some statement with reference to bringing a group of Jehovah's witnesses back into Jeannette?

- A I was.
- Q What was that statement?
- A He made the statement to the mayor that they would send so many to Jeannette the police wouldn't be able to handle them.
- Q And was that while there were certain cases then pending before the mayor?
- A Yes.
- Q And was that threat made good?
- A It was.
- Q How long afterwards?
- A Two weeks.
- Q Were you on duty that day?
- A Yes.
- Q Would that be this April 2 date that we have been talking about here, or about that time—April 2, 1939?
- A About that time.
- Q Were you present in the fire department when some complaints were received.
- A Yes.
- Q Just tell the Court approximately how many complaints were received by the fire department.
- A We had between fifteen and twenty complaints come in then.
- Q At the fire department?
- A Yes.
- Q And that is a separate phone, a separate connection, from the police department?
- A That is right.

CROSS EXAMINATION

Mr. Covington:

- Q Were you present when Mr. Hessler delivered to the chief this letter (handing Exhibit 2 to witness)?
- A No, sir.
- Q You weren't?

A No, sir.

Q Did you hear any discussion—you didn't hear any discussion then about that letter. Is that correct?

A That is correct.

CHARLES R. STEWART, Jr., a witness called by the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Mr. Stewart, the records which you have produced in court here show the payment of a number of bonds. Were those bonds issued by the Kingdom Service Company?

A Kingdom Service Association, yes.

Q Kingdom Service Association. And are those bonds being paid from time to time out of the funds of the company?

A Being paid from time to time out of receipts from contributions, yes.

Q Well, that is out of the funds of the company?

A That is right.

Q Regardless of the source from which they come?

A That is correct.

CROSS EXAMINATION

Mr. Covington:

Q Those bonds were issued for what purpose?

A Those bonds were issued to provide funds for the construction of the Kingdom school at Gates, Pennsylvania.

DEFENDANT RESTS.

TESTIMONY CLOSED.

Certificate

I HEREBY CERTIFY that the foregoing pages contain a full, true and correct transcript of the evidence taken upon the trial of the case of ROBERT L. DOUGLAS, et al, Plaintiffs, vs. CITY OF JEANNETTE (PENNSYLVANIA) et al, at No. 1206 Civil Action; together with the offers of counsel, objections thereto, ruling of the Court thereon, and exceptions thereto.

HARRIET COLE THOMAS
Official Reporter.

Pittsburgh, Pennsylvania
August 16, 1941.

Certificate

I, Robert M. Gibson, Judge of the District Court of the United States for the Western District of Pennsylvania, hereby certify that the foregoing is a true transcript of all the evidence, offers of counsel, objections thereto, rulings of the Court thereon, and exceptions thereto, in the case of ROBERT L. DOUGLAS, et al, Plaintiffs, vs. CITY OF JEANNETTE (PENNSYLVANIA), et al, Defendants, at No. 1206 Civil Action; all of which, so certified, is ordered to be filed and to become a part of the record, this 18th day of August, 1941.

R. M. GIBSON
Trial Judge.

Opinion

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Plaintiffs,*

v.

No. 1206
Civil Action

City of Jeannette, (Pennsylvania), a
municipal corporation, and John M.
O'Connell, individually and as Mayor
of City of Jeannette (Pennsylvania),
Defendants.

GIBSON, District Judge.

The court, after hearing and consideration, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. All the plaintiffs are resident citizens of the Commonwealth of Pennsylvania and of the Federal Western District of Pennsylvania, except the plaintiff LAMBORN, a resident citizen of the State of Ohio, and plaintiff SEDERS, a resident citizen of the State of West Virginia.

2. Defendant CITY OF JEANNETTE (Pennsylvania) is a municipal corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania.

3. Defendant JOHN M. O'CONNELL is the duly qualified and acting Mayor of said City of Jeannette and is a resident citizen of the Commonwealth of Pennsylvania.

4. The plaintiffs are members of a cult known as Jehovah's witnesses, who have brought the action for themselves

and for all Jehovah's witnesses in the Western District of Pennsylvania.

5. Jehovah's witnesses are an unincorporated body of persons who profess themselves as under the Theocratic government as reflected in the Bible. Each asserts that he is an ordained minister and as such required by his faith to give witness to the name and honor of ALMIGHTY GOD by preaching the gospel, as understood by them, upon the streets of communities, including those of defendants, the City of Jeannette, and by selling and distributing literature printed by the Watch Tower Bible & Tract Society, Inc., a New York corporation, and the Watch Tower Bible & Tract Society, a Pennsylvania corporation, in the form of books, booklets, and periodicals, to people upon the streets and at their homes. This literature is so distributed for the purpose of informing and convincing the persons receiving it concerning the religious beliefs of said Jehovah's witnesses. Said Jehovah's witnesses, and the books, etc. distributed by them, strongly attack religious practices of organized churches existing today.

6. The defendant City of Jeannette has enacted and in force an ordinance which, inter alia, requires all persons engaged in the distribution of books, periodicals and tracts, such as those distributed by Jehovah's witnesses, to pay a certain fixed amount for a license or permit to enable them to sell and distribute such matter, under penalty of arrest and fine for sale in Jeannette without such license or permit. A copy of said ordinance, marked Exhibit "A" is attached to these findings.

7. Officers of defendant, the City of Jeannette, including the officer defendant, have arrested certain of the plaintiffs, and others of Jehovah's witnesses, solely for selling and distributing the literature (described in paragraph 5, supra) without obtaining a license or permit therefor, and have visited upon them the penalty prescribed by the ordinance of defendant, the City of Jeannette, wherein the arrest was made, and have declared their intention to further enforce

said ordinance against plaintiffs and others of Jehovah's witnesses.

8. Plaintiffs have testified that their distribution of literature as aforesaid is their method of serving ALMIGHTY GOD and preaching His Word.

9. The evidence does not disclose that plaintiffs' distribution injuriously affects the public health, safety, morals or welfare.

Conclusions of Law

- I This court has jurisdiction of this cause.
- II The ordinance of the City of Jeannette is invalid as it affects plaintiffs and others of Jehovah's witnesses, in that it deprives said plaintiffs and others of the right of freedom of the press and of religion granted them by First and Fourteenth Amendments of the Constitution of the United States.
- III The defendant, City of Jeannette, may not lawfully exact a license or permit fee from distributors of books, tracts or periodicals, put out for the purpose of informing or influencing the recipients, said books, tracts or periodicals not being in violation of any public law.
- IV Plaintiffs are entitled to a decree by which defendants, the City of Jeannette, is enjoined from enforcing its said ordinance, and said defendant, City of Jeannette, is enjoined from acting to enforce said ordinance against plaintiffs and others of Jehovah's witnesses.

Discussion

The essential facts of this case are parallel with those in WALTER A. REID, ET AL. v. BOROUGH OF BROOKVILLE, ET AL., No. 1183 Civil Action, and the discussion of that case is applicable to the instant one, and is therefore not repeated.

Exhibit "A"

Ordinance No. 60 of the City of Jeannette reads as follows:

"That all persons canvassing for or soliciting within said Borough (now City of Jeannette), orders for goods, paintings, pictures, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

"For one day \$1.50; for 1 week, seven \$7.00 Dollars, for two weeks twelve \$12.00 Dollars, for three weeks twenty \$20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

"That all persons huckstering, peddling or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the sum of ten (\$10.00) Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days."

Opinion of District Judge in Companion Case
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Walter A. Reid, Margaret Reid;
 Thomas W. Aikins, Foster C. Hummel,
 Manson C. Martz, Carl Swisher,
 Gertrude Glass, Kathryn Glass,
 Angelo Galuppo, and Charles R.
 Hessler, *Plaintiffs,*

vs.

No. 1183
 Civil Action

Borough of Brookville (Pennsylvania),
 a municipal corporation,
 Harold W. Thompson,
 Borough of Clearfield, (Pennsylvania),
 a municipal corporation,
 C. E. Roseberry,
 City of Monessen, (Pennsylvania),
 a municipal corporation,
 James C. Gold,
 Borough of New Bethlehem
 (Pennsylvania), a municipal
 corporation,
 George A. Cowan, and Russell Barker,
Defendants.

DISCUSSION

The plaintiffs are members of a cult known as "Jehovah's witnesses", and the defendants are boroughs of the Western District of Pennsylvania and their officers.

The only ground common to the defendant boroughs is that each has in force an ordinance which requires a license from a borough authority to each person selling or distributing merchandise, including books and periodicals, upon the streets or from door to door. The ordinance of the Borough

of Monessen differs from the other ordinances in that it is directed against disloyal persons and those who have refused to salute the American flag, and asserts as one of the requirements for a license that the applicant salute the flag. Although joined together as defendants, the cases of the various boroughs were tried separately.

The facts in each case were substantially parallel. Members of "Jehovah's witnesses" had been arrested in the past in each borough, and the officers of the borough have declared their intention to pursue the same policy in the future if the "Witnesses" functioned as in the past without first securing the license contemplated by the ordinance. On behalf of plaintiffs it is claimed that the application of the ordinances to "Jehovah's witnesses" and their activities encroaches upon the civil and constitutional rights of such Witnesses. The rights so attacked, they say, are those of freedom of worship, freedom of speech, freedom of press and of assemblage.

Each of "Jehovah's witnesses" asserts that he is an ordained minister. The method of his ordination is not very plain, but the evidence of it is found in a small printed card which bears his name in typewriting at the top and the printed signature of the "Watch Tower Bible & Tract Society, J. F. Rutherford President". This card asserts in part:

"TO WHOM IT MAY CONCERN:

This is to certify that
whose signature appears below, is an ordained
minister of Jehovah God to preach the gospel of
God's Kingdom under Christ Jesus and is therefore
one of Jehovah's witnesses; that he is sent forth
by this Society . . . to preach the gospel of God's
kingdom"

The function of each Witness as such ordained minister is to sell or distribute the periodicals or tracts put forth by the Watch Tower Bible & Tract Society upon the street or

by a house-to-house canvass. In this distribution religion as practiced and advocated by organized church bodies is denounced as a "snare and a racket"—this being in accordance with the declarations of the Watch Tower publications. A housewife, called from her cooking breakfast to listen to pointed criticisms of her religion by a persistent book agent, is quite likely to regard the agent as a nuisance, even though the agent sincerely believes that he is but fulfilling his duty to Jehovah by his attempted sale and advocacy. And the ordinary citizen is apt to be indignant and regard a Jehovah's witness as disloyal when the latter refuses to salute the national flag, or to allow his children in school to salute it, even though the Witness may be acting pursuant to a religious scruple.

Practices such as those mentioned have caused ordinances such as those in suit to be enacted, or at least enforced, for the purpose of curbing the activities of Jehovah's witnesses. As to the legality of the enforcement of such ordinances against Jehovah's witnesses this court is not left to its uncontrolled judgment. The Supreme Court has recently had before it cases in which the activities of Jehovah's witnesses were under consideration. See *LOVELL v. CITY OF GRIFFIN*, 303 U. S. 444; *SCHNEIDER v. IRVINGTON*, 308 U. S. 147; *CANTWELL v. CONNECTICUT*, 310 U. S. 296. In each of these cases a Witness was selling Watch Tower publications upon the street and by house-to-house canvass without having obtained the permit prescribed by an ordinance of the municipality for such actions. The Court held that the enforcement of the ordinance against Jehovah's witnesses was invalid in that it infringed upon his right to freedom of speech, of press and of religion granted him by the First and Fourteenth Amendments to the Constitution. The facts in the case cited are so closely parallel with those of the instant cases that it is unnecessary for this court to do other than refer to the cited cases in support of its finding that plaintiffs are entitled to decrees by which the defendant boroughs and their officers are enjoined from en-

forcing the ordinances in question against Jehovah's witnesses when engaged in the advocacy of their religious views by the sale of books, periodicals and tracts.

It may be noted, however, that the instant cases differ from those cited in that the latter were appeals from State appellate courts which had passed upon sentences of lower courts, while the plaintiffs herein are seeking injunctions against threatened future enforcement of the ordinances against Jehovah's witnesses, but not upon any prior convictions against them. This difference in situation is of no moment, owing to the continuing nature of the acts of the defendants. Ordinarily a court of equity will not intervene to enjoin procedure under criminal statutes, but will do so to prevent continuing invasion of property or constitutional rights. *TERRANCE v. THOMPSON*, 263 U. S. 197; *HAGUE v. C. I. O., ET AL.*, 307 U. S. 496. Appeals from the Court of the Burgess of the borough, through the courts of the State to the Supreme Court of the United States would not furnish prompt and complete relief under the circumstances of the instant cases.

The ordinances of the defendant boroughs have each substantially the requirement, under penalty, that a license must be obtained from a borough officer before periodicals, tracts, etc., may be distributed in the borough, and this requirement, as stated supra, tends to deprive plaintiffs of their constitutional rights. The ordinance of the Borough of Monessen, in addition, required the applicant to salute the American flag as a requisite to a license. A license not being required, such provision is immaterial. Its inclusion in a hawking ordinance is far from bringing the ordinance within the scope of *MINERSVILLE SCHOOL DISTRICT v. GOBITIS*, 310 U. S. 586, 594, opinion by Mr. Justice Frankfurter. The ordinance is not a "general law not aimed at the promotion or restriction of religious beliefs", but quite evidently one having in contemplation Jehovah's witnesses and their beliefs—although doubtless inspired by a sincere, although misdirected, feeling of loyalty.

Let separate decrees be presented in accordance with the foregoing discussion after notice to counsel for the respective defendants.

Decree

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF PENNSYLVANIA

Pittsburgh Division

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn, and Robert
Murdock, Jr., *Plaintiffs,*

v.

No. 1206
Civil Action

City of Jeannette, (Pennsylvania), a
municipal corporation, and John M.
O'Connell, individually and as Mayor
of City of Jeannette (Pennsylvania),
Defendants.

This cause came on for final hearing on February 21, 1941 and came the plaintiffs by their attorneys and came also the defendants by their attorneys and the parties announced ready for trial.

Thereupon the court considered the complaint and the answer of said defendants and heard evidence introduced by the parties and thereupon the matter was argued to the court by counsel and on the 24th day of February 1941 the court took the case under advisement and thereafter counsel prepared and submitted briefs:

And the court having fully considered the pleadings, the facts, the arguments of counsel and briefs submitted, and being fully advised in the premises did on May 2, 1941, pur-

suant to Rule 52 of the Rules of Civil Procedure, file herein its special findings of fact and conclusions of law are made a part hereof together with the court's discussion and memorandum of the law of the case.

And now, to wit, on this 13th day of May, 1941, it is hereby ordered, adjudged and decreed by the court that the said defendants, their agents, servants and employees and each of them be permanently enjoined from enforcing, as to plaintiffs and all other of Jehovah's witnesses for whom plaintiffs sue herein, said ordinance described in the complaint and reading as follows:

"ORDINANCE No. 60 of the City of Jeannette

"That all persons canvassing for or soliciting within said Borough (now City) of Jeannette orders for goods, paintings, pictures, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

"For one day \$1.50, for 1 week, seven \$7.00 Dollars, for two weeks twelve \$12.00 Dollars, for three weeks twenty (\$20.00) Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

"That all persons huckstering, peddling or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the sum of ten (\$10.00) Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction,

tion before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days."

And it is further ordered, adjudged and decreed that the said defendants and their agents, servants and employees and each of them be permanently enjoined from molesting, obstructing or in any way interfering (under authority of the above described ordinance) with plaintiffs or any other of Jehovah's witnesses on whose behalf this action is brought, for or on account of the activities of plaintiffs or said other persons in distributing any magazines, books, booklets, pamphlets, tracts, leaflets, or periodicals of the character described in the evidence and complaint within the said City of Jeannette, whether by gift or sale.

It is further ordered, adjudged and decreed that all costs of this suit be taxed against the defendants.

Done and dated at Pittsburgh, Pennsylvania, on this 13th day of May, 1941.

R. M. GIBSON
Judge, United States District Court
for the
Western District of Pennsylvania

Certificate**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn, and Robert
Murdock, Jr., *Plaintiffs,*

v.

No. 1206
Civil Action

City of Jeannette, (Pennsylvania), a
municipal corporation, and John M.
O'Connell, individually and as Mayor
of City of Jeannette, (Pennsylvania)

I, G. H. Berger, Clerk of the United States District
Court for the Western District of Pennsylvania, do hereby
certify that the attached and foregoing documents are true
copies of the original papers on file in the United States Dis-
trict Court for the Western District of Pennsylvania, in the
case of Robert L. Douglas, et al. vs. City of Jeannette, et al.

WITNESS my hand and the seal
of this Court, this 10th day of
September, 1941.
G. H. BERGER, Clerk

Docket Entries

In The UNITED STATES CIRCUIT COURT OF APPEALS For the Third Circuit

No. 7793

October Term, 1941.

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Appellees*,

vs.

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania),
Appellants.

Aug. 2, 1941	Notice of Appeal filed.
Aug. 2, 1941	Appearances of counsel entered.
Sept. 9, 1941	Order extending time for completing Record ten days to Sept. 16, 1941, filed.
Sept. 11, 1941	Transcript of Record from District Court filed.
Sept. 11, 1941	Copy of Transcript of Record from the District Court filed.
Sept. 20, 1941	Transfer to Argument List.
Oct. 15, 1941	Praecipe for Appearance of Hayden C. Covington for Appellee filed.
Oct. 21, 1941	Petition for Leave to extend time for filing Appellants brief filed.
Oct. 21, 1941	Submitted on Petition, Coram: Biggs, Maris and Goodrich, J. J.

- Oct. 21, 1941 Order extending time for filing Appellants' brief to Nov. 11, 1941, filed.
- Nov. 17, 1941 Brief for Appellants and Appendix filed.
- Dec. 5, 1941 Brief for Appellees and Appendix filed.
- Dec. 6, 1941 Acceptance of Service of Appellees' Brief filed.
- Dec. 10, 1941 Praecipe for Appearance of Joseph F. Rutherford for Appellees filed.
- Dec. 15, 1941 Heard on Appellees' Motion for Postponement, Coram, Biggs, Maris and Goodrich, J.J. Granted to week of Jan. 5, 1942.
- Jan. 7, 1942 Argued—Coram: Biggs, Maris & Jones, J. J.
- June 3, 1942 Order directing Reargument before Court en banc on June 15, 1942, filed.
- June 15, 1942 Reargued, Coram: Biggs, Maris, Jones & Goodrich, J. J.
- June 17, 1942 Appellants' Memorandum of Authorities on Reargument filed.
- June 18, 1942 Appellees' Memorandum of Authorities on Reargument filed.
- Aug. 31, 1942 Opinion of the Court by Maris, J. filed.
- Aug. 31, 1942 Dissenting Opinion by Jones, J. filed.
- Aug. 31, 1942 Order Reversing Decree etc. filed.
- Aug. 31, 1942 Copy of opinion to Kunkel, Walthour and Trescher.
- Sept. 2, 1942 Designation of Record to accompany Petition to Supreme Court for Certiorari filed.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 7793.October Term, 1941

ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALKBRENNER, CARROLL CHRISTO-
PHER, VICTOR SWANSON, NICHOLAS KODA,
CHARLES SEDERS, ROBERT LAMBORN and
ROBERT MURDOCK, Jr.,

v.

CITY OF JEANNETTE (Pennsylvania), a Municipal Cor-
poration, and JOHN M. O'CONNELL, Individually
and as Mayor of City of Jeannette (Pennsylvania),
Appellants.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

OPINION

(Filed August 31, 1942).

Before BIGGS, MARIS, JONES and GOODRICH, *Circuit Judges.*

MARIS, Circuit Judge.

The plaintiffs,¹ members of a sect known as Jehovah's Witnesses, brought suit in the district court for themselves and "for all Jehovah's Witnesses throughout the entire Commonwealth of Pennsylvania and adjoining states" to enjoin the defendant city of Jeannette and its Mayor from enforcing against them and other members of the Jehovah's Witnesses a certain ordinance of that city, which is a municipal corporation organized under the laws of Pennsylvania. After hearing, the court below concluded that the ordinance, as applied by the municipality's officers, to the activities of the Jehovah's Witnesses, worked a deprivation of their freedom of worship, of speech and of press in violation of the Fourteenth Amendment of the Constitution of the United States. Accordingly, the court entered the decree from which the defendants took the instant appeal.

The appeal raises two questions, (1) whether the District Court had jurisdiction of the cause, and (2) whether the ordinance is unconstitutional as applied to the activities of the plaintiffs and others of the Jehovah's Witnesses.

In part here material, the ordinance² provides that all persons canvassing for or soliciting orders, within the city of Jeannette, for goods, wares and merchandise of any kind shall procure from the Mayor of that city a license, paying therefor to the city's Treasurer a fee of \$1.50 a day with

¹ Of the nine plaintiffs, seven are citizens of Pennsylvania, one of Ohio and one of West Virginia.

² The ordinance in full is as follows:

"Ordinance No. 60 of the City of Jeannette:

"That all persons canvassing for or soliciting within said Borough [now City] of Jeannette orders for goods, paintings, pictures, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

"For one day \$1.50, for 1 week, seven \$7.00 Dollars, for two weeks twelve \$12.00 Dollars, for three weeks twenty \$20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

relative reductions in the per diem rates for longer term licenses.

The Jehovah's Witnesses are an unincorporated body of persons who profess themselves to be acting in obedience to the commands of Almighty God as revealed by the Bible. Each of the members of the group asserts that he is an ordained minister and that he is required by his faith to give witness to the name, honor and majesty of Almighty God by preaching the gospel, as understood by them, upon the streets of communities, and by distributing certain literature, for a specified contribution, to people upon the streets and in their homes. The literature, which is published or issued by the Watchtower Bible and Tract Society, Inc., a New York corporation, is in the form of books, pamphlets and periodicals, and is intended to inform and persuade the persons receiving it of the merit of the religious beliefs of Jehovah's Witnesses, who personally and in the literature strongly attack the religious practices of organized churches existing today.

The plaintiffs, along with other members of the Jehovah's Witnesses, went to the city of Jeannette, and upon going from house to house, played on portable phonographs records of matter which they desired to impart to their auditors, to whom they then offered the books and pamphlets

(Footnote 2 continued)

"That all persons huckstering, peddling or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the sum of ten (\$10.00) Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days."

of the sect in exchange for a contribution, so-called, of twenty-five cents for a book and five cents for a pamphlet or two. There is evidence that at times one or more of the publications were given free if the particular auditor appeared to be interested but was without the means to make the requested contribution. Such gratuitous distribution was necessarily limited as the solicitors are required to pay the Watchtower Bible and Tract Society for the literature which they distribute. The publications were also offered on like conditions to people upon the streets of the city.

In March 1939 the city officials of Jeannette notified the Jehovah's Witnesses that it was necessary for them to procure licenses, as provided by the ordinance, if they desired to solicit from house to house, and that, failing so to comply, they would be arrested for violating the ordinance. On April 2, 1939, a letter signed by some fifty members of the Witnesses, including most of the plaintiffs, was delivered to the police and Mayor of Jeannette informing them that they refused and would continue to refuse to obtain licenses on the ground that they were not peddlers but ministers of Jehovah God doing their work in obedience to His explicit command and that for them to seek a permit to do what they were so commanded would be an insult to the Creator as His law is supreme and above all human law.

Having thus refused to procure licenses, a number of the Jehovah's Witnesses renewed their door to door canvassing and soliciting in the city of Jeannette on April 2, 1939. On that occasion (a Sunday) more than one hundred of them descended upon the city and proceeded to canvass and solicit from house to house throughout the day. During that visitation the time of the City's police and firemen was preempted in receiving and investigating numerous complaints from citizens because of the activities of the Witnesses, twenty-one of whom were arrested at that time for violating the ordinance. Eighteen of those arrested were held for a hearing before the Mayor's court, where they were convicted of the violations charged. Appeals to the

Quarter Sessions Court of the local jurisdiction (Westmoreland County) from the convictions in the Mayor's court were dismissed because of the appellants' failure to attach transcripts of the records of conviction in the Mayor's court and, also, because of a decision by the Pennsylvania Superior Court (*Pittsburgh v. Ruffner*, 134 Pa. Superior Ct. 192) upholding the validity and like enforcement of a somewhat similar ordinance. A joint appeal to the Pennsylvania Superior Court from the judgments of the Quarter Sessions Court was also dismissed because the record presented no basis for holding that there had been an abuse of discretion on the part of the Quarter Sessions Court.³ An appeal to the Supreme Court of Pennsylvania from the judgment of the Superior Court was likewise refused.⁴ The defendants then petitioned the Supreme Court of the United States for certiorari, which was denied, as was also their petition for rehearing.⁵

Since April 1939 the Jehovah's Witnesses have continued their house to house canvass in the city of Jeannette, offering their literature and soliciting contributions. At no time have they applied for or procured licenses as required by the ordinance, and arrests and convictions for violations of the ordinance continued. Exclusive of the twenty-one arrests made on April 2, 1939, more than thirty arrests were made from then until February 1940, when the latest arrests were made. Appeals from convictions on the later arrests are still pending in the Quarter Sessions Court of Westmoreland County, Pennsylvania. It was in that situation that the suit for an injunction was instituted in the court below.

³ *Commonwealth v. Stewart*, 137 Pa. Superior Ct. 445, 448.

⁴ See 137 Pa. Superior Ct. XXXIII, under "Allocaturs refused by the Supreme Court of Pennsylvania".

⁵ *Stewart v. Pennsylvania (City of Jeannette)*, 309 U. S. 674, rehearing den. 309 U. S. 699.

We shall consider first the question whether the district court had jurisdiction of the cause of action. The complaint alleges that jurisdiction exists under and by virtue of the Civil Rights Act of 1871, now Section 1979 Revised Statutes (8 U.S.C.A. § 43),⁶ which confers a personal right of action at law or in equity for the redress of "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws", and Section 24 (14) of the Judicial Code (28 U.S.C.A. § 41 (14)),⁷ which confers upon the district courts jurisdiction of suits brought under the authority of Section 1979 Revised Statutes.⁸ The rights of which the plaintiffs allege they have been deprived by the defendants under color of the ordinance in question are their rights to freedom of speech, freedom of the press, freedom of assembly and freedom of religious worship. In paragraph 17 of the complaint⁹ it is expressly averred that the ordinance has been applied by the defendants against the plaintiffs so as to deprive them of these rights "contrary to the Federal Constitution, Fourteenth Amendment, Section 1." Since these rights are not privileges or immunities of national

⁶ Section 1979 Revised Statutes is as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress."

⁷ Section 24(14) of the Judicial Code is as follows:

"The district courts shall have original jurisdiction as follows:

"Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

⁸ *Hague v. C. I. O.*, 307 U. S. 496; 508, 529, 530.

⁹ Paragraph 17 of the complaint is as follows:

"That the above described ordinance of said City of Jeannette is unconstitutional and void as construed and applied by defendants

citizenship¹⁰ and since a denial of the equal protection of the laws is not involved, the reference must necessarily be to the provision of the Fourteenth Amendment that no state shall "deprive any person of . . . liberty . . . without due process of law."

Freedom of worship, freedom of speech, freedom of the press, and the right of assembly are not the subject of direct constitutional grant. They are, however, constitutionally recognized and confirmed as attributes of liberty incident to all persons under the Constitution and laws of the United States regardless of their citizenship; and, as such, they are secured by the First Amendment against abridgment by the Congress, and by the Fourteenth Amendment against deprivation by a state without due process of law.¹¹ It is now settled that they are rights "secured" by the Constitution within the meaning of Section 1979 Revised Statutes and Section 24(14) of the Judicial Code.¹² It follows that if the complaint sufficiently alleges deprivation of these rights without due process of law the jurisdiction of the district court must be sustained, since jurisdiction to hear a suitor's complaint depends upon what he states his complaint to be and not upon whether at the hearing he is able

(Footnote 9 continued)

against plaintiffs because as so construed and applied each of the provisions of said ordinance has been used and will be used unlawfully to deny and deprive plaintiffs and others of Jehovah's witnesses of their 'civil rights' of freedom of speech, of press and of assembly, and freedom to worship Almighty God according to dictates of their consciences, all contrary to the Federal Constitution, Fourteenth Amendment, Section 1."

¹⁰ See Justice Stone's discussion of this subject in *Hague v. C. I. O.*, 307 U. S. 496, 520-522 (1938).

¹¹ *Chaplinsky v. State of New Hampshire*, U. S. (1942); *Cantwell v. Connecticut*, 310 U. S. 296, 303; *Hague v. C. I. O.*, 307 U. S. 496, 519; *Lovell v. Griffin*, 303 U. S. 444, 450; *DeJonge v. Oregon*, 299 U. S. 353, 364; *Grosjean v. American Press Co.*, 297 U. S. 233, 243-244; *Near v. Minnesota*, 283 U. S. 697, 707; *Stromberg v. California*, 283 U. S. 359, 368; *Gitlow v. New York*, 268 U. S. 652, 666.

¹² *Hague v. C. I. O.*, 307 U. S. 496, (1939).

to establish its merit.¹³ For were we to hold that jurisdiction exists only if the proven facts justify the conclusion that there has been a deprivation of liberty without due process of law it would necessarily follow that in every such case the court would have to hear and decide the merits of the controversy before deciding whether it had power to hear and decide the merits. This would be a manifest absurdity.

The complaint, as we have seen, merely alleges in effect that the plaintiffs have been deprived of their liberty without due process of law. The due process of law which is claimed to have been absent is in no way spelled out. This, it is urged, renders the complaint insufficient to establish jurisdiction. It is said that the facts showing a want of due process should have been alleged. But we think they need not, indeed cannot, be set out where substantive rather than procedural rights are concerned. The impossibility of particularizing the absence of due process of law in pleading a violation of the due process clause as the basis for the jurisdiction of the district court is due primarily to the undefined and ever changing character of the concept involved. An examination of the cases discloses that the Supreme Court has consistently refused to attempt a comprehensive definition of what is meant by due process.

¹³ *Mosher v. Phoenix*, 287 U. S. 29 (1932). In *Minersville District v. Gobitis*, 310 U. S. 586 (1940), the plaintiffs sought to enjoin the defendants from enforcing a school board regulation which required pupils to salute the flag as a condition to attendance at the public schools. The district court concluded that it had jurisdiction and that the plaintiffs had been deprived of their liberty and property without due process of law. It issued an injunction and was affirmed by the Circuit Court of Appeals. The Supreme Court reversed, concluding that the plaintiffs had not been deprived of their liberty and property without due process because it was the proper exercise of the state's governmental function to adopt appropriate means to evoke national unity among school children. This was a ruling that the plaintiffs had not made out a cause of action. Although exactly the same facts were relied upon for jurisdiction which the Supreme Court concluded were insufficient to state a cause of action it did not remand to the district court with directions to dismiss the bill in equity for want of jurisdiction or indicate in any other way that jurisdiction was lacking.

of law.¹⁴ Such definitions as it has formulated have been so restricted to the facts of the particular cases before it as to render them inapplicable as statements of general principles. Then also for many years after the inclusion of the due process clause in the Fourteenth Amendment the cases were concerned with due process of law solely in its procedural aspect. Indeed this was so generally the case that it was at one time thought that the due process clause applied only to procedural rights.¹⁵ Gradually, however, the scope of the phrase was broadened by judicial construction and substantive rights were recognized to be embraced within its protection.¹⁶ Due process of law thus came to be recognized as representing the limits which the Constitution places upon that exercise by the state of its sovereign power which infringes the traditional and constitutionally secured rights and liberties of the individual.

Considered as a touchstone by which the inevitable conflicts between the broad sweep of the state's sovereign power

¹⁴ *Davidson v. New Orleans*, 96 U.S. 97, 101 (1877); *Orient Insurance Company v. Daggs*, 172 U.S. 557, 563 (1898); *Ballard v. Hunter*, 204 U.S. 241, 255 (1907); *Twining v. New Jersey*, 211 U.S. 78, 99, 100 (1908); *Belts v. Brady*, U.S. (1942); see also *Kales*—"Due Process" *The Inarticulate Major Premise* (1917) 26 *Yale L.J.* 519.

¹⁵ *Reeder, The Due Process Clauses and "The Substance of Individual Rights"* (1910) 49 *U. of Pa. L. Rev.* 191.

¹⁶ In *Chicago, Burlington, & N. v. Chicago*, 166 U.S. 226, 234, 235 (1896) Justice Harlan said: "But a State may not, by any of its agencies, disregard the prohibition of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment."

In *Buck v. Bell*, 274 U.S. 200, 207 (1927) Justice Holmes said: "There can be no doubt that so far as procedure is concerned the rights of the patient are most carefully considered, and as every step in this case was taken in scrupulous compliance with the statute and after months of observation, there is no doubt that in that respect the plaintiff in error has had due process of law. The attack is not upon the procedure but upon the substantive law."

In *Whitney v. California*, 274 U.S. 357, 373, (1927) Justice Brandeis said: "Despite arguments to the contrary which had seemed to me persuasive, it is settled that the due process clause of the Fourteenth Amendment applies to matters of substantive law as well as to matters of procedure."

and the cherished rights and liberties of the citizen are to be resolved the concept of due process of law could no longer be restricted to the definite issues of fact which are involved in purely procedural questions but inevitably entered into the realms of political, social and economic theory and became purely a matter of judgment on the part of the ultimate tribunal.¹⁷ The presence or absence of due process of law thus came to be decided in accordance with the philosophical views of a majority of the justices of the Supreme Court before whom the controversy was argued. The philosophy which stressed the property rights of the individual was inclined to see in the most socially desirable legislation a denial of due process, while the point of view which accorded first consideration to the good of the whole saw no unconstitutional deprivation of property in the most

¹⁷ In argument in the Supreme Court in *Adkins v. Children's Hospital*, 261 U. S. 525, 530, 531, counsel for the appellants, now a justice of that court, ably characterized the essential nature of due process of law as follows: "This Court has consistently recognized the futility of defining 'due process'. The 'due process' clauses embody a standard of fair dealing to be applied to the myriad variety of facts that are involved in modern legislation. That is why this Court has refused to draw lines in advance. The impact of facts must establish the line in each case. The application of 'due process' clauses is, in the last analysis, a process of judgment by this Court. In the application of the varying facts to the test of fair dealing the ultimate question in this Court is, does legislation, or its actual operation, 'shock the sense of fairness the Fourteenth Amendment was intended to satisfy in respect to state legislation'?" *Chicago & N.W. Ry. Co. v. Nye*, *Schneider Fowler Co.*, 260 U. S. 35. During the fifty years of extensive judicial unfolding, the central ideas that inhere in this constitutional safeguard have become manifest. A careful study of the long line of cases especially dealing with the 'due process' clause, beginning with the *Slaughter-House Cases*, 16 Wall. 36, shows two dominant ideas conceived to be fundamental principles: (1) Freedom from arbitrary or wanton interference, and (2) protection against spoliation of property. 'Arbitrary,' 'wanton' and 'spoliation' are the words which are the motif of the decisions under the 'due process' clauses. That is as close as we can get to it; it is close enough when dealing with the great questions of government. What it means is that the Fourteenth Amendment intended to leave the States the free play necessary for effective dealing with the constant shift of governmental problems, and not to hamper the States except where it would be obvious to disinterested men that the action was arbitrary and wanton, and therefore spoliative and unjustified."

drastic and far reaching of enactments.¹⁸ When personal liberties, rather than property rights, were involved the emphasis was shifted. Thus we find that while in recent years as the Supreme Court has increasingly recognized the right of a state in the exercise of its sovereign power incidentally to deprive individuals of their property, there has at the same time been definitely greater emphasis placed by the court upon the importance of the personal liberties secured to the individual by the Constitution and increased recognition of the place of the due process clause in protecting those liberties from impairment by the state. A realistic view of the changing interpretation of the due process clause compels the view that whether applied to the exercise of the police power, the taxing power, the power of eminent domain or any other power inherent in sovereignty, the due process clause has been a potentially restrictive force only when the numerical preponderance of justices of the Supreme Court has accorded the rights of the individual the prime consideration.

It must, therefore, be concluded that, except for cases involving purely procedural due process, it is not facing reality to say that the want of due process of law is a question of fact. On the contrary, it is, as we have seen, a legal or, more accurately, a philosophical concept as to the extent to which the state, in the exercise of its sovereign power, should be permitted to deprive individuals within its jurisdiction of their lives, liberty or property.¹⁹ Its application to

¹⁸ Compare the reasoning in *Lochner v. New York*, 198 U. S. 45 (1905) with that in *Bunting v. Oregon*, 243 U. S. 426 (1917); *Adkins v. Children's Hospital*, 261 U. S. 525 (1923) with *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937); *New State Ice Co. v. Liebmann*, 285 U. S. 262 (1932) with *Nebbia v. New York*, 291 U. S. 502 (1934). See also *Cushman-Social and Economic Interpretation*, (1922) 20 Mich. L. Rev. 737.

¹⁹ That "due process of law" is a philosophical concept of the character suggested rather than a factual one is highlighted by the recent five to four decision of the Supreme Court in three cases, one of which (*Bowden v. City of Forth Smith*) is indistinguishable from the case before us. In those cases (reported sub nom. *Jones v. City of Opelika*, U. S. (1942) as in this, the City ordinances required all persons following certain specified businesses, trades or vocations

the facts of a particular case is purely a matter of judgment and therefore is solely a question of law. The most, therefore, that the pleader is required to do in a case of the kind now before us is to set out those facts upon which he relies to prove a deprivation of life, liberty or property by the state and to aver that the deprivation was beyond that which, under our Constitution, is allowable to the state in the exercise of its sovereign power, or, in the language of the Fifth and Fourteenth Amendments, that it was without due process of law.²⁰

The plaintiffs' complaint in the present case meets this requirement. Shorn of all surplusage, the complaint alleges that the complainants sell books and pamphlets which embody their educational and religious ideas and that the defendants, acting under color of the city ordinance, seek to prevent them from thus disseminating their ideas unless they pay a tax levied upon the privilege. If the enforcement of such payments by the city in the exercise of the police or taxing powers of the state arbitrarily or unreasonably abridges the constitutional liberties of the complainants it

(Footnote 19 continued)

to pay a fixed sum for the privilege. Members of the religious sect known as Jehovah's Witnesses sold books and pamphlets without making any payments and were arrested and convicted of violating the ordinances. They argued that the convictions were invalid because the ordinance as applied to them was unconstitutional since it deprived them of their freedom of speech, press and religion without due process of law. Five justices interpreted the ordinances as providing for the collection of a nondiscriminatory license fee and concluded that their enforcement against those selling books and other publications was a proper regulatory measure within the State's police power to which the liberties of the individual must yield. Four justices construed the ordinances as tax measures which when applied to the dissemination of ideas, educational and religious, became instruments to suppress or even destroy the free exercise of speech, press and religion and therefore violative of the due process clause of the Fourteenth Amendment.

²⁰ In *Columbus Ry. & Power Co. v. Columbus*, 249 U. S. 399, 406 (1918), Justice Day said: "We are of opinion that there was jurisdiction in the District Court to entertain the bill as it presented questions arising under the Fourteenth Amendment to the Federal Constitution not so wholly lacking in merit as to afford no basis of jurisdiction. Jurisdiction does not depend upon the decision of the case, and should be entertained if the bill presents questions of a character giving the party the right to invoke the judgment of a federal court."

is without due process of law and therefore is in violation of the Fourteenth Amendment as a matter of law. As we have seen, the plaintiff's complaint contains an allegation of such a violation. It follows from what has been said that the complaint sufficiently alleges a deprivation of liberty without due process of law. We accordingly hold that the district court had jurisdiction of the cause of action disclosed in the complaint. We may add that in this conclusion we are supported by the decision of the Circuit Court of Appeals for the Tenth Circuit in *Oney v. Oklahoma City*, 120 F. 2d 861 (1941) and of the Circuit Court of Appeals for the First Circuit in *City of Manchester v. Leiby*, 117 F. 2d 661 (1940), cert. den. 313 U. S. 562.

We are thus brought to the merits of the case. In view of the fundamental importance of the question involved we think it not improper to say that Judge Biggs and the writer of this opinion in harmony with the views expressed by Chief Justice Stone and Justice Murphy and concurred in by Justices Black and Douglas in the case of *Bowden v. City of Fort Smith*, U. S. (decided June 8, 1942, would, if free to do so, vote to hold that the district court was right in concluding that the ordinance of the City of Jeannette is unconstitutional as applied to the activities of the plaintiffs and their associates.²¹ The case before us is, however, indistinguishable from the case just cited and we are, therefore, constrained by the decision of the majority of the Supreme Court in that case to hold to the contrary.

Accordingly the decree of the district court is reversed and the cause is remanded with directions to dismiss the complaint.

JONES, *Circuit Judge, dissenting.*

As I read the bill of complaint, the plaintiffs fail to plead a case cognizable in a District Court. I should, there-

²¹ Judge Goodrich deems it inappropriate to express his individual views as to the merits of the case in view of the controlling decision of the Supreme Court in *Bowden v. City of Fort Smith*, *supra*.

fore, reverse the decree below and remand with directions to the District Court to dismiss the complaint for want of jurisdiction.

That a District Court has jurisdiction under Sec. 24 (14)¹ of the Judicial Code of a cause of action under R.S. §1979² is, of course, not disputed. See *Hague v. C.I.O.*, 307 U.S. 496, 508, 529, 530. The question here *in limine* is whether the bill of complaint alleges a cause within the jurisdiction conferred by Sec. 24 (14). Plainly enough, it is not all state deprivation of liberty which the Fourteenth Amendment of the Constitution inhibits but only such as is effected without due process of law. Not liberty, but security against undue state deprivation thereof is the right which the Fourteenth Amendment secures in material regard. What R.S. §1979 in turn confers is a right of action for the redress of the deprivation of a right secured by the Constitution and laws.

Certain it is that a District Court exercises only such jurisdiction as has been expressly conferred upon it by an Act of Congress. *Kline v. Burke Construction Company*, 260 U.S. 226, 234. Consequently, it is incumbent upon one who seeks the aid of a District Court to make out a case for jurisdiction. This should be made affirmatively to appear by the allegations of the bill. *Mosher v. City of Phoenix*, 287 U.S. 29, 30; *Norton v. Larney*, 266 U.S. 511, 515; *McCain v. Des Moines*, 174 U.S. 168, 181. Unless that be done, jurisdiction must be deemed not to exist. Cf. *Norton v. Larney*, *supra*, pp. 515, 516. As the right to strike down state action through invocation of federal jurisdiction is a high privilege and one which necessarily involves the relation between the national and local governments, the specified requirements for a District Court's exercise of jurisdiction should no less be met in such instance. The plaintiffs should, therefore, be required to aver facts which show, or at least tend to show,

¹ 28 U.S.C.A. Section 41 (14).

² Act of April 20, 1871, c. 22, §1, 17 Stat. 13, as modified and reenacted by R.S. §1979, 8 U.S.C.A. §43.

what amounts to the state's denial of their liberty without due process of law before they may assert a right of action under R.S. §1979 or invoke the court's jurisdiction under Sec. 24 (14).

Substantially, all that the bill of complaint in this case avers is the plaintiffs' membership in the sect known as Jehovah's Witnesses, their canvassing and soliciting in the Borough of Jeannette for the distribution of books and pamphlets for a specified contribution without procuring a vendor's license as required by a borough ordinance, their arrest for violating the ordinance, hearings on the charges, convictions and appeals to the courts of the state. Not once throughout their lengthy bill of complaint do the plaintiffs aver a fact from which it can even be inferred, as a matter of law, that they were denied due process either substantively or procedurally. They make no assault upon the validity of the ordinance as being either arbitrary, discriminatory or capricious.³ Specifically, the bill contains no averment that the ordinance, either upon its face or as administered, prohibited all canvassing or soliciting within the municipality. Cf. *Lovell v. Griffin*, 303 U. S. 444. It is not even averred that the ordinance was ever enforced with respect to more than house-to-house canvassing. There is no averment that the ordinance either creates or was utilized to create a discretionary censorship in anyone. Cf. *Schneider v. State*, 308 U. S. 147. Nor is there any averment that the ordinance, by its terms or as administered, discriminates against any group of applicants for licenses. In addition to this, there was open to the plaintiffs and they exercised, as the bill discloses, a right of appeal to courts of record in the state; and there is no suggestion that the plaintiffs were ever proceeded against for violating the ordinance except by means of legal process or that a hearing before a judicial tribunal on charges of violating the ordinance was ever denied them. Cf. *Hague v. C.I.O.*, *supra*.

³ The ordinance, which was enacted in 1898, was of the familiar hawker or vendor type widely adopted and long used by municipalities.

In one instance, they do refer to their hearings in the Mayor's court as "mock" but do not hint at a fact to support the characterization.

Having thus failed to aver facts showing any want of due process, the plaintiffs contented themselves with a bald conclusion of law to the effect that the defendants' enforcement of the ordinance as to them deprived them of freedom of worship, speech and press "contrary to the Federal Constitution, Fourteenth Amendment, Section 1".⁴ The majority say that this general allegation, taken in conjunction with the recitals as to enforcement of the ordinance and the plaintiffs' desire to distribute books and pamphlets without municipal license, is sufficient to spell out a case of unconstitutional state deprivation of liberty and hold in substance that the presence or absence of due process of law, where civil rights are said to be involved, depends upon the philosophical concept thereof on the part of the judges to whom the matter is addressed.

True enough, the term "due process of law" cannot, in the abstract, be defined with nicety or precision. It is also true that the very indefiniteness of the term renders it adaptable to changed conceptions which have received general acceptance. That views may change as human experiences widen and knowledge accumulates with the passing of time is but natural. And it is equally natural that such changes should reflect themselves in the law when a word so relative as the word "due" is the subject for recurring interpretation in different circumstances. But that does not mean that there is never a present standard by which the dueness of legal process may be adjudged. The decided cases contemporaneously sketch out a pattern of its instant measure. It is at all times a shield against arbitrary, discriminatory or capricious legislative or other governmental action. By that standard, it was the duty of the plaintiffs to show by the allegations of their bill a case of the state's

⁴ See paragraph 17 of the bill of complaint quoted in full in footnote 9 of the majority opinion, ante, p. 6.

wrongful deprivation of their freedom of worship, speech or press. This they failed to do.

No case has been cited which appears to hold that, in order to invoke federal jurisdiction to restrain a state's alleged deprivation of life, liberty or property, all that is necessary is an allegation that the Fourteenth Amendment is being violated. Furthermore, the general language of decided cases is to be read in the light of what was actually before the courts. In *Columbus Railway, Power & Light Company v. City of Columbus*, 249 U. S. 399, cited by the majority, the bill of complaint which, as the Supreme Court said, "presented questions arising under the Fourteenth Amendment to the Federal Constitution not so wholly lacking in merit as to afford no basis of jurisdiction" was replete with detailed specification of pecuniary loss to the complainant railway through the defendant municipality's insistence upon continued transit service under local franchise ordinances for inadequate and confiscatory rates of fare according to the facts averred in the bill. Of course, there was jurisdiction there. The bill showed, *prima facie*, a deprivation of property without due process of law.

As I read the opinion of Justice Stone in the Hague case, it seems implicit that a showing of a want of due process is essential to an invocation of the jurisdiction under Sec. 24 (14) of an action under R.S. §1979 for the redress of the deprivation of a right secured by the due process clause of the Fourteenth Amendment. The bill of complaint in the Hague case, whereby the jurisdiction was to be adjudged, fairly bristled with allegations of fact showing an arbitrary, discriminatory and even violent deprivation of the complainants' freedom of speech, press and assembly, all done by municipal officers of Jersey City under color of enforcing a city ordinance. Certainly, Justice Stone's opinion in the Hague case provides no implication that all that is necessary to jurisdiction under Sec. 24 (14) to redress an alleged deprivation of liberty is an allegation that the defendants are acting contrary to the Fourteenth

Amendment. If that were so, then the case involving a local ordinance or state statute that could not be taken directly to a District Court for attempted invalidation would, indeed, be difficult to imagine, for the security of the due process clause extends also to life and property. The necessary consequence would be an unwarranted extension of federal jurisdiction over local matters. Yet, a "serious apprehension for the rightful independence of local government" was a reason ascribed by Justice Stone for his dissent from the majority's extension of "privileges or immunities" in *Colgate v. Harvey*, 296 U.S. 404, 436, 445, which, incidentally, was later expressly overruled in *Madden v. Kentucky*, 309 U.S. 83, 93. A like apprehension suggests no less that, where an ordinance does not, on its face or as administered, deprive of life, liberty or property either arbitrarily, discriminatorily, or capriciously, and there has been no denial of procedural due process, the interpretation of the ordinance and the manner of its administration should, in the first instance, be left to the courts of the state.⁵

The opinion of Justice Roberts in the Hague case cannot be said to furnish the plaintiffs any support for federal jurisdiction under the averments of their bill. The right of action under R.S. §1979, which Justice Roberts perceived under the bill in the Hague case, was for the redress of state abridgment of the complainants' privileges and immunities as citizens, contrary to the Fourteenth Amendment. What it is necessary to aver in order to plead jurisdiction of a case under the due process clause of the Fourteenth Amendment, was, therefore, neither germane nor considered. A want of due process is not a condition of the security against state abridgment which the Fourteenth Amendment gives to citizens in respect of their privileges

⁵ *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 499-500; *Thompson v. Magnolia Co.*, 309 U.S. 478, 484; *Lindsey v. Washington*, 301 U.S. 397, 400; *Bevins v. Prindable*, 39 F. Supp. 708, Washington, 301 U.S. 397, 400; *Bevins v. Prindable*, 39 F. Supp. 708, 713 (E.D.Ill.), a three judge court, where Jehovah's Witnesses assailed an Illinois statute as invalid under the Fourteenth Amendment.

and immunities. Moreover, even though the present plaintiffs are citizens, the redress which they seek is not for the abridgment of privileges or immunities attending their national citizenship. The rights which they assert are attributes of the liberty incident to all persons subject to the jurisdiction of the United States regardless of their citizenship.

In *Minersville District v. Gobitis*, 310 U. S. 586, the matter of jurisdiction was not passed upon by the Supreme Court. The District Court had expressly found that jurisdiction of that case did not exist under Sec. 24 (14) but did exist under Sec. 24 (1). *Gobitis v. Minersville School District*, 21 F. Supp. 581, 586-587 (E.D.Pa.). In so far as the security afforded by the due process clause of the Fourteenth Amendment was considered by the District Court in the *Gobitis* case, it was only to the extent of perceiving a right in the plaintiffs arising under the Constitution. It was upon that right and an amount in controversy in excess of \$3,000, as found by the court, that jurisdiction of the *Gobitis* case was deliberately laid under Sec. 24 (1); and the Court of Appeals affirmed without mentioning jurisdiction. *Minersville School District v. Gobitis*, 108 F. 2d 683 (C.C.A. 3). In these circumstances it is hard to see how the *Gobitis* case can be thought to imply that, where one invokes jurisdiction under Sec. 24 (14) of a cause of action under R.S. §1979 for alleged state deprivation of liberty, he is under no duty to aver facts showing that the deprivation resulted from a want of due process.

Neither the case of *Oney v. Oklahoma City*, 120 F. 2d 861, 866 (C.C.A. 10), nor the case of *City of Manchester v. Leiby*, 117 F. 2d 611, 664 (C.C.A. 1), cert. den. 313 U. S. 562, seems to have been intended as a definitive ruling as to the scope of the pleading necessary to make out a case for jurisdiction under Sec. 24 (14) of an action under R.S. §1979. In the *Oney* case the District Court had dismissed for lack of jurisdiction, and the Court of Appeals, in reversing and remanding for further proceeding, did so in the expressed

belief that the matter could "best be determined after issues have been made up and a full hearing had." Yet, it has been held (*Mosher v. City of Phoenix*, *supra*, at p. 30) that jurisdiction is not to be determined "by the way the facts turn out or by a decision of the merits." In the *Leiby* case the Court of Appeals held (p. 664) that "freedom of speech, of the press, and of religion are rights 'secured by the Constitution of the United States' within the meaning of Section 24 (14); and that under Section 24 (14) the District Court had jurisdiction of the . . . suit, which is of the sort described in the Civil Rights Act" But that does not conclude what it is necessary for a plaintiff to aver in order to invoke the jurisdiction. As indicated at the outset of this opinion, there can be no doubt that jurisdiction under Sec. 24 (14) is both appropriate and available for a right of action under R.S. §1979 where a cause is shown to exist.

In no event should federal jurisdiction be assumed merely because of its supposed greater convenience for the determination of a constitutional question, as the learned court below apparently conceived (see reference to *Reid v. Brookville*, 39 F. Supp. 30, 32 (W.D.Pa.)). Actual experience shows that the convenience of obtaining a final decision of a constitutional question is equally as great where the litigation is instituted in and proceeded with through the state courts. Except for the *Hague* case, the cases upon which the Supreme Court has passed in recent years (of a nature somewhat similar to the present) went there by appeal from final judgments of state courts.⁶ While nothing is to be deducted from that fact by way of an argu-

⁶ *Cnaplinsky v. State of New Hampshire*, — U. S. — (decided March 9, 1942); *Cox v. New Hampshire*, 312 U. S. 569; *Cantwell v. Connecticut*, 310 U. S. 296; *Schneider v. State*, 308 U. S. 147; *Lovell v. Griffin*, 303 U. S. 444; *Jones v. Opelika*, *Bowden v. Fort Smith*, and *Jobin v. Arizona*, — U. S. — (decided June 8, 1942). *Valentine v. Christensen*, — U. S. — (decided April 13, 1942), which went to the Supreme Court on certiorari to the Court of Appeals for the Second Circuit, furnishes no exception. Jurisdiction in that case rested upon diversity of citizenship and the amount in controversy and not upon Sec. 24 (14) of the Judicial Code.

ment against the existence of jurisdiction in the District Courts, it at least indicates that proceeding through the state courts in local matters with ultimate appeal to the Supreme Court on any constitutional questions arising therein is both an expeditious and efficacious means for obtaining a final decision by the highest federal court. As the Supreme Court's jurisdiction in such regard exists by virtue of Sec. 237 of the Judicial Code (28 U.S.C.A. §344), it is unaffected by the limitations attending the jurisdiction of federal courts of first instance.

The conclusion herein reached with respect to the question of jurisdiction renders inappropriate a consideration of the merits. I, therefore, refrain from expressing any opinion as to the law relating thereto.

A true Copy:

Teste:

*Clerk of the United States Circuit Court of Appeals
for the Third Circuit.*

Judgment

In The
UNITED STATES CIRCUIT COURT OF APPEALS

For the Third Circuit

No. 7793

October Term, 1941

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Appellees*,

vs.

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania),
Appellants.

Appeal from the District Court of the United States,
for the Western District of Pennsylvania.

This cause came on to be heard on the transcript of
record from the District Court of the United States, for the
Western District of Pennsylvania, and was argued by
counsel.

On consideration whereof, it is now here ordered, ad-
judged, and decreed by this Court, that the decree of the
said District Court in this cause be, and the same is hereby
reversed, with costs, and the cause is remanded to the said
District Court with directions to dismiss the complaint.

August 31, 1942

JOHN BIGGS, Jr.
Circuit Judge

Designation of Record

In The
UNITED STATES CIRCUIT COURT OF APPEALS
For The Third Circuit

No. 7793

October Term 1941

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Appellees*,

v.

Appeal from the
District Court of
the
United States
for the Western
District of
Pennsylvania

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania),
Appellants:

TO HONORABLE WILLIAM P. ROWLAND, Clerk of
the above Court.

You will please prepare a printed copy of the entire
record filed in the above entitled and numbered cause for
the purpose of filing with the Clerk of the United States Su-
preme Court to accompany a petition for writ of certiorari
consisting of the following:

- (1) Docket Entries of the Clerk of the District Court.
- (2) Complaint filed in the District Court.
- (3) Answer to the Complaint.
- (4) Transcript of the testimony, consisting of 156 pages

of typewritten evidence prepared by stenographer together with certificates of stenographer and Judge of the United States District Court.

- (5) Opinion of the District Court.
- (6) Conclusions of Law filed by the District Judge.
- (7) Discussion of District Judge.
- (8) Discussion and opinion of District Judge in companion case of Reid et al. v. Brookville et al.
- (9) Decree of the United States District Court.
- (10) Opinion of the United States Circuit Court of Appeals filed August 31, 1942.
- (11) Judgment of the United States Circuit Court of Appeals.
- (12) Copy of this designation.
- (13) Certificate of counsel as to printed record.
- (14) Certificate of Clerk of United States Circuit Court of Appeals.

Dated: September 1, 1942.

HAYDEN C. COVINGTON
Attorney for Appellees

STIPULATION

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

OCTOBER TERM, 1941

No. 7793

■

ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALKBRENNER, CARROL CHRISTOPHER,
VICTOR SWANSON, NICHOLAS KODA, CHARLES
SEEDERS, ROBERT LAMBORN, and ROBERT
MURDOCK, JR.,

Plaintiffs-Appellees

v.

CITY OF JEANNETTE (Pennsylvania), a municipal
corporation, and JOHN M. O'CONNELL, individually and
as Mayor of City of Jeannette (Pennsylvania),

Defendants-Appellants

■

It is hereby stipulated that the papers hereinbefore
printed comprise true and correct copies of the record from
the District Court of the United States for the Western Dis-
trict of Pennsylvania and of the record from the United
States Third Circuit Court of Appeals, and that printing of
all exhibits is omitted and said exhibits shall be submitted
in original form to the reviewing Court.

Dated, September 1942.

FRED B. TRESCHER
Irwin Gas Coal Building
Greensburg, Pennsylvania
Attorney for
Defendants-Appellants

HAYDEN C. COVINGTON
117 Adams Street
Brooklyn, New York
Attorney for
Plaintiffs-Appellees

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 450

ORDER ALLOWING CERTIORARI—Filed February 15, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is assigned for argument immediately following Nos. 480-487.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4756)